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# OVERSIGHT OF THE MINE SAFETY AND HEALTH ADMINISTRATION

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## HEARINGS

BEFORE THE

COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

EXAMINING ACTIVITIES OF THE MINE SAFETY AND HEALTH ADMINISTRATION

MARCH 11 AND 12, 1987

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# OVERSIGHT OF THE MINE SAFETY AND HEALTH ADMINISTRATION

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WEDNESDAY, MARCH 11, 1987

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
*Washington, DC.*

The committee met, pursuant to notice, at 9:33 a.m., in room SD-430, Dirksen Senate Office Building, Senator Edward M. Kennedy (chairman) presiding.

Present: Senators Kennedy, Simon, and Hatch.

## OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. We will come to order.

This hearing is the first oversight hearing by the Labor and Human Resources Committee in the 100th Congress. It continues to build on the record begun last September under the chairmanship of Senator Hatch when this committee began its investigation into the Mine Safety and Health Administration.

The evidence the committee received then was a cause for serious distress. We learned that the agency had launched a program to water down its own regulations on electrical safety in the mines. In virtually every case where the mining industry wanted a regulation that was weaker than the regulations recommended by the Mine Safety Administration's experts, the agency overruled its own experts and sided with the industry.

These flip-flops in favor of the regulated industry are no mere technicalities. Lives are lost every year because these regulations are weak, and there is no time to lose in correcting the problems of this agency when lives are at stake.

The witnesses who come to the committee today include several present and former employees of the Mine Safety and Health Administration. The story they have to tell is alarming. The same process of weakening the regulations to suit the mining industry has been repeated in other areas. Enforcement agents for the agency have been harassed or transferred whenever they were caught doing what the law requires them to do—to prosecute those who break it.

We have known for a long time how to prevent many of the deaths in the mines. What we seem to have lost lately is the will to do what good judgment and the law require. It makes me angry when I think of the men who sweat in these mines and who are exposed to hazards they cannot see or control. It makes me angry every time I hear or read about a miner who has been crushed or suffocated or electrocuted on the job because the people who are supposed to protect the miners will not do their jobs.

These miners are dead and gone, but the truth will not be buried with them. Today, this committee goes into the mines not in search of coal, but in search of truth. By bringing the truth out of the mines and into the light, we hope to hasten the day when this nation will make good on its commitment that the coal this nation needs will not be soaked with the blood of those who mine it.

We want to recognize at the outset of this hearing that we will see a very clear pattern developing that will be enormously distressing not only for the coal industry but other mining industries as well.

Before we proceed, I also want to acknowledge the cooperation of many individuals in the agency and in the field. I am always mindful that in this agency, MSHA, as well as other agencies, there are thousands of men and women who are doing their job and doing it well. Because they are doing it well, lives are being saved, and the public interest is being enhanced.

Our challenge today is to those that are frustrating those valuable and worthwhile efforts. We will focus this hearing on that type of activity, and I think compelling cases will be presented.

At this time we will receive the opening statement of Senator Simon.

## OPENING STATEMENT OF SENATOR PAUL SIMON

Senator SIMON. Mr. Chairman, I am pleased to participate in the hearings of the full Committee on Labor and Human Resources in the oversight of the Mine Safety and Health Administration. We received a taste of the major concerns in this regard last fall at the first hearing on this topic. I am certain that the hearings today and tomorrow will shed even more light on the potential problems at MSHA. I hope this will result in the correction of these problems to save the lives of miners nationwide.

Today we will hear from those affected by mine disasters—MSHA employees, widows of miners, and current and retired miners. I look forward to hearing what they have to say about their dealings with the Mine Safety and Health Administration, both in inspections and in investigations after mine disasters.

Tomorrow, we will hear from representatives from the Mine Safety and Health Administration, the United Mine Workers of America and the mining industry. I also hope to gain great insight from their testimony.

One of our witnesses investigated a mine roof fall in Shawneetown, IL. I welcome his testimony, and hope that it will lead to fewer injuries and deaths in Illinois and across the Nation.

At times, we seem to be quite cavalier about addressing the many mine disasters which have occurred throughout the years. It took major disasters for any legislation regulating the safety of mines to become law. We cannot follow this history and allow this attitude to continue. We must continue investigations such as the one occurring today to "head off" disasters before they happen. Human lives are simply worth more than some discomfort felt during this type of investigation. If that discomfort caused by the investigation can result in lives saved—as well as a troubled industry restored—it has been worthwhile.

Thank you, Mr. Chairman, for providing the committee with the opportunity of hearing these witnesses.

The CHAIRMAN. We have a full slate of witnesses this morning. I welcome our first panel who are slated at the table: J. Davitt McAteer, who is the director of Occupational Safety and Health Law Center, Washington, D.C.; Herschel Potter, former Chief, Division of Safety, Mine Safety and Health Administration; and Paul Componation, who is a former Mine Safety and Health Specialist, Mine Safety and Health Administration.

We will start off with Mr. McAteer.

## STATEMENT OF J. DAVITT McATEER, DIRECTOR, OCCUPATIONAL SAFETY AND HEALTH LAW CENTER, WASHINGTON, DC; HERSCHEL H. POTTER, FORMER CHIEF, DIVISION OF SAFETY, MINE SAFETY AND HEALTH ADMINISTRATION; AND PAUL COMPONATION, FORMER MINE SAFETY AND HEALTH SPECIALIST, MINE SAFETY AND HEALTH ADMINISTRATION

Mr. McATEER. Senator Kennedy, thank you for this opportunity to appear before you today. I am here representing the Coal Employment Project, a group which represents women miners who work in the coal and metal and non-metal mines throughout the country.

I would like to submit for the record a written statement and summarize that with my testimony here.

The CHAIRMAN. Yes.

Mr. McATEER. In 1969 and 1977, the Congress, after major disasters, attempted to compel the federal government to become a more effective guardian to the 500,000 miners of this country. This the government has failed to do.

Safety, we know now, is not a matter of occurrence or random chance but is a matter of commitment and effort on the part of all the parties involved—the government, the industry and labor.

This conclusion has been reached not only by ourselves but by the National Academy of Science and by the President's Commission on Coal in 1980. Unfortunately, this agency, MSHA, has failed to carry out their part of the commitment. Their failures are perhaps most notable in the area of accountability. Here, the shortcoming of the agency is profound.

During the last six years, this agency has conducted three internal investigations of its own actions. In each instance, the agency's activities have been found wanting.

In 1980, the agency reviewed its Roof Control Program. It found seven major areas where the Roof Control Program was inadequate, both in its own conduct and in the conduct of the operators. It made 16 recommendations to correct those problems. Since that time, those recommendations have not been acted upon.

Again in 1982, the agency examined the ventilation plans for the mines. They found major problems in the ventilating of the mines in this country. One particularly notable problem is the ventilation of abandoned and idle areas. That particular problem was so significant because it had led to the disaster in 1968 at the Farmington mine which, in fact, was responsible for some of the legislation that we have today. Yet, finding that mines were still in the same condition as the Farmington mine in 1968, the agency has failed to take action to correct this problem.

Third and most significant is the agency began in 1980 to study its own shortcomings, examining multiple fatals where more than one miner are killed at one time. The agency sent national personnel rather than the local personnel to take a look at these accidents. The local personnel have obviously a conflict of interest. If an inspector inspects a mine and an accident occurs the next day, he then goes and makes an investigation of the accident. His acts may be culpable; his own conduct may be challenged.

So national teams were sent down on 18 occasions to look at multiple fatal accidents. In several of these examinations, serious shortcomings were found on the part of the agency, not just from the standpoint of one individual inspector, but from the standpoint of the program.

It was found, for example, that inspectors could not read mine maps. It was found, for example, that inspectors did not enforce the law, did not have adequate record-keeping procedures, that they did not know what was going on at those mines, that the records were not kept in good order in the MSHA offices.

The investigations were then turned over to the agency in general. Unfortunately, very inadequate and, in some instances, no corrective action was taken after these investigations.

In spring of 1986, these investigations—that is, the national investigations of multiple fatals—were stopped. There was no policy statement. There were no memoranda. There was no order from the Assistant Secretary. The department personnel were simply advised that henceforward there would only be investigation of accidents by the individuals in the districts who were the same people who had been making the investigations. We think that is a severe mistake.

This Committee has discussed previously the regulatory rewrite program that the Agency is undertaking is flawed. Beginning in 1982 the Agency set up a Regulatory Rewrite Program; it set up 15 committees of Agency experts to study particular problems. It came up with a set of proposed regulations. The proposals were then rejected by certain Agency officials, and in place of those proposals, substitute amendments were put in, reflecting the same amendments that were submitted by the American Mining Congress.

It is our position that the process that made up the present rules is flawed. On December 15, 1986, we wrote a letter to the Secretary of Labor and asked him to take a look at the process, to establish an advisory committee, as he has authority to do, to review the regulatory process. We asked this because the proposals submitted by the expert committees should be used as the basis for rulemaking because they dealt with the individual problems that miners had experienced and were based on the fatal accident experience in the previous 5–10 years.

To this date, we have received no reply from the Secretary of Labor. We suggest to this committee that you urge the Secretary of

Labor to empanel such an advisory committee to take a look at the regulatory process, because in our view, it is fatally flawed.

The CHAIRMAN. We will make that letter part of the record. I think it is self-explanatory. You sent members of these committees copies of this as well. I think there are excellent suggestions in the letter. I certainly support the recommendations that you make, and I think anyone that reviews today's and tomorrow's record of our committee will feel even stronger about such recommendations.

[The letter referred to in text follows:]

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December 15, 1986

Secretary William E. Brock
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-2018
Washington, D.C. 20510

Dear Secretary Brock:

As you are aware, MSHA is proposing regulatory reform in a number of areas. In six specific areas these efforts have been expedited; they include: (1) explosives and blasting, (2) electrical, (3) ventilation, (4) roof control, (5) pattern of violations, and (6) approval of plans. These areas will have a profound and sustained effect upon the safety and health conditions which miners will face in the coming years.

During the Senate Labor and Human Resources Committee Oversight Hearings on Mine Safety and Inspections (September 25, 1986), questions were raised by Senator Edward Kennedy, among others, regarding the validity of the rulemaking process and the proposed changes currently being undertaken by MSHA. Senator Kennedy suggested that several of the proposed regulations reflect the position of industry to the exclusion of virtually all other views, including the views of the professional staff of MSHA. It was pointed out that the agency managers had rejected the proposed amendments and suggestions of its own internal committees, and opted instead for positions virtually identical with proposals of industry associations.

In 1982 at the direction of the Vice Presidential Task Force, MSHA set up 8 task force groups composed of agency employees who were given the task of developing and revising regulations. Each group was made up of the best available technical experts in each subject area. In 1983, the first irregularity occurred concerning this regulatory process. As reported by industry news media, industry officials attempted to contact agency personnel who were serving on various committees. The agency, concerned about improper influence, instructed the committee members not to engage in conversations with anyone outside the agency and to refer such contacts to the Solicitor's Office. (See Attachment A)

In May 1983, several task force groups completed sets of proposed regulations and transmitted those regulations to the Office of Standards and the Office of the Solicitor, along with justifications for their proposed changes. In at least one instance (electrical), justification for each change was based upon the committees review of fatal and non-fatal accident experience at U.S. mines, with regard to the type of regulations being considered.

However, after the committee had completed its work and transmitted the proposed changes to the Office of Standards, the proposed package and justifications were, in many instances, almost entirely rejected. In a number of cases, the task force proposals and justifications were not disputed nor questioned, they were simply disregarded; substitute sets of regulations which included no justifications were submitted by MSHA managers who are less expert than the committee members. Thus, the rulemaking record and the committee efforts became irrelevant.

More importantly, in several instances these newly proposed regulations resulted in a diminution of safety and health standards and, therefore, are contrary to the requirements of the Act, as set out in Section 811(a)(9).

> No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard.

We believe that a review of the proposed regulations and the rulemaking process is necessary to ensure that there has not been a significant deviation from the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. I and the Administrative Procedures Act, 5 U.S.C. Section 553. Such a review could ensure that: the record include references to the committee proposals and justifications and that the charges and the implications made by Senator Kennedy, especially as they related to undue influence on the part of the industry officials and organization, could be addressed before any new regulations are finalized. (See Attachment B)

The questions raised by Senator Kennedy have not been adequately addressed by agency response, even though a substantial period of time has elapsed since the Senate hearing occurred.

We, therefore, request that you Mr. Secretary, appoint an advisory committee to review these regulations under 30 U.S.C. Section 811(a)(1). That Section provides for the appointment of an Advisory Committee when the Secretary determines that a rule should be promulgated in order to serve the objects of the Act.

Such Committee could be made up of individuals from industry, labor, government, public interest and the academic community. Such a committee, as provided for in the Act, has not been initiated by the Assistant Secretary in any of the areas under consideration, and could be a valuable force in dispelling any hint of undue influence or invalid procedures.

Such a committee could make recommendations to the Secretary, as provided for in the statute, and could act expeditiously because the record of the internal MSHA committees as well as the industry proposals and the draft agency provisions could be made available to reduce the time needed for substantive consideration.

The Federal Mine Safety and Health Act is clear on the requirement that all promulgated regulations improve the safety and health protections afforded the miners.

The issues raised both during the September 25 hearing and otherwise have cast grave doubts concerning the validity of the rulemaking procedures as well as the rules currently under consideration. The appointment of such an advisory committee could eliminate that doubt and ensure that those regulations are promulgated with the full confidence of all segments of the industry, as well as in compliance with the purpose and language of the Act for the improvement of miners' safety.

The recently announced resignation of Assistant Secretary David Zegeer underscores the need to proceed with caution so as to insure that substantial modifications of the regulations which affect the safety of every working miner be done in full compliance with all legal requirements and with the cooperation and participation of all facets of the mining community. The appointment of an Advisory Committee could instill the necessary confidence in the process and in the new rules.

Sincerely yours,

J. Davitt McAteer
Counsel for Coal Employment
Project

cc: Senator Edward M. Kennedy
Senator Howard M. Metzenbaum
Senator Paul Simon
Congressman Joseph M. Gaydos

The CHAIRMAN. Let us continue.

Mr. MCATEER. Thank you.

With regard to penalizing an operator, the Mine Safety and Health Administration has three methods to make the operator comply with the law: One is to close the mine down. Second is to assess a civil penalty. Third is to assess or to prosecute under criminal sanctions.

The agency keeps no records on a national scale of the number of closures, so we cannot analyze those numbers. In the area of criminal penalties, since 1968, there have been 38 successful prosecutions. There have only been 54 referrals by the agency to the Department of Justice. Since 1984, the number of referrals has dropped from fifteen to five. In December of 1985, the assistant secretary, displeased with one or two of the referrals, requested and got a memo changing the referral process. That memo not only takes into account the criminal conduct of the operator, but says that the Agency will also look at whether the operator had a good-faith dispute with MSHA, whether the operator had a good record, and other matters, which are not related to the criminal conduct and which are outside the scope of the criminal sanction of that particular section. The criminal penalty provision has simply not worked. It has not been enforced.

In the area of civil penalties, two significant problems have occurred.

The CHAIRMAN. Why would not the response be to that, well, the mines are much safer now so MSHA does not need the kinds of investigations that were done?

Mr. MCATEER. During the 18-year period that 38 prosecutions have occurred, there have been 2,029 fatal accidents. There have been 1.6 million civil penalties. There have ben $201 million in penalties assessed.

Apparently, the criminal side does not reflect what is found on the civil side.

In the civil penalty provisions, notwithstanding the fact that there have been this tremendous number of civil penalties assessed and a tremendous amount of money paid into the treasury, the fact is that that amount of money, when it is compared to the amount of coal that is being produced, the tonnage, comes out to 1.6 cents per ton over the nine-year period. Thus it cost the average mine operator 1.6¢ per ton for violation, a paltry sum to say the least.

In addition, in 1982, the agency provided a fixed rate penalty, the $20 fine, saying that for "minor, non-serious penalties," there would be simply a $20 fine and it would not use the necessary formula that Congress established to determine whether the operator was culpable. There are six elements which include the degree of his culpability, the size of his mine, et cetera. In 1982 those six elements were disregarded and a $20 penalty has been set up for "nonsignificant or substantial penalties."

Since 1980, the number of assessed penalties has declined, and the dollar amount collected has declined as well.

Turning now to the education and training program, the statute requires two things: One, it requires that miners be educated and trained; and, two, it requires that supervisors be certified and qualified.

We have the least stringent education and training program requirements for any developed industrial nation in the world.

Number two, we still to this day do not have a certification or qualification scheme established by the agency for supervisory personnel. I daresay that this country is alone in that area. We rely on state certification and state qualification which have been shown to be inadequate over a long period of time.

Finally, in 1982, in one of the first acts of this Administration, related to mine safety the agency closed down the eight education and training centers and delegated that authority to the district managers.

The CHAIRMAN. What has happened to education and training since that function has been delegated to the other managers? Have those programs continued?

Mr. McATEER. You see, we were just starting to develop the education and training program in this country. It was only implemented after the 1977 law in any real way. We were just beginning to develop a sophisticated education and training program in this country for new miners. Up until that time, you took a boy who was 18 years old or a girl who was 18 years old, and you put them with three days' training underground. In the late 1970's and early 1980's we were just beginning to develop schemes for education and training.

By contrast, in Britain, education and training has been done on a nationwide basis for several decades. There it takes a year-and-a-half of training before a person is assigned to a job on their own underground. You work first aboveground; you go through a course, an education and training course; then you work in a controlled area underground—in a model section, as it were—under supervision. Then you are taken with supervisor into the mine, and you never work independently for at least a year-and-a-half.

In our country, we now have a 40-hour requirement for the most states, and that requirement is not being enforced as it should be.

Next, with regard to accident statistics, since 1975 and 1976, in fatal and non-fatal areas, we have seen a leveling off of the improvement in mine safety. The two most significant categories are the fatals and the serious non-fatal accidents. In both those categories, there has been little or no movement since 1975 and 1976 to the present date. We have approximately a rate of .06 per 200,000 man hours for fatals and 5.5 per 200,000 man hours for non-fatals in those two categories. We simply have reached a status quo situation and have killed and injured that number of people a year at the present rate.

Since 1978 in regard to fatals, we have had no significant movement during the ten-year period, but have experienced a positive movement in four years, a negative movement in four years, and a neutral movement in two years. So the trend line has not been one of improvement for miners.

Given the points that we have briefly mentioned here and the material in our written testimony, we would like to make a suggestion for this Committee's consideration. We believe that the agency does not have the capability to adequately review and correct its own conduct. We are proposing a National Mine Safety Board, along the lines of the National Transportation Safety Board, that will look at and analyze accidents, that will look at multiple fatals, that will look at the conduct of the agency as well as the conduct of the industry, and would make recommendations as to remedial or corrective actions to be taken by the Agency and the mine operators.

We have seen that MSHA is incapable of making its own analysis, of making its own recommendations and of following those recommendations once it makes them. We think that such a board would have the ability to conduct an independent review, and as an independent agency to establish strong and clear recommendations which the Agency would be compelled by public pressure to follow.

Thank you very much for this opportunity.

[The prepared statement of Mr. McAteer follows:]

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TESTIMONY OF

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UNITED STATES SENATE

OVERSIGHT HEARINGS

on

THE MINE SAFETY AND HEALTH ADMINISTRATION

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## TESTIMONY - SENATE HEARING

### Introduction

Ladies and Gentlemen, my name is J. Davitt McAteer. I am the Director of the Occupational Safety & Health Law Center. I wish to thank you for this opportunity to appear here today. I am here representing the Coal Employment Project, a group which represents women miners in both coal and metal mines throughout this country.

This oversight hearing is critical to the health and safety of the miners of this country. In 1969 and 1977, the Congress, after major disasters, attempted to compel the federal government to become a more effective guardian of this country's 500,000 miners . . . this the government has failed to do. The Congress gave both the responsibility and authority to the Department of Labor to see that mines were operated safely and that miners were protected. The agency charged with that responsibility, the Mine Safety & Health Administration, has systematically failed to carry out its responsibilities - that failure in the mine safety area has deadly results upon the miners and the families of miners. Each year, dozens of miners are killed and thousands are injured. The Department will argue that this number is down from previous years - and this is so, but employment is also down, reducing the number of miners at risk. Moreover, we are now at a point in history where miners should not have to risk their lives to earn a living, and, in addition, miners in other countries stand a better chance of living out their lives than do the miners from this country. Moreover, some mines in this country achieve a far better safety rate than others. Safety is not a random occurance. It can be achieved by commitment and effort. This conclusion is not ours alone. The National Academy of Science study in 1982 and the President's Commission on Coal in 1980 both found that mine safety is an attainable goal which requires commitment of men, time and effort. It is a problem much like any other management problem which will respond to hard work. Many mines can and are operated safely. Many are not. MSHA has and is failing to discharge its responsibility; thus, they are doing a disservice to the miners but also to those people who are failing to operate safe mines through ignorance or lack of information, and to those people who are mining safely and successfully by allowing negligent operators to subsidize their mining with injuries.

This agency is among the oldest federal governmental regulatory agencies in this country. It has been given perhaps the most far reaching authority of any agency in the Federal System.

It has been charged over and over again by Congress and by Presidents of every political persuasion throughout history to enforce diligently. It has been allocated funds and manpower to carry out its charter. Its funding and manpower levels are far greater than that of its sister agency (OSHA) per worker or per site inspected. The Agency has had more experience than most regulatory agencies; the industry is well aware of its existence and has, with few exceptions, come to accept the responsibility and authority of the inspectors, yet the Agency has and is failing to do its job.

Particularly since the beginning of this decade, through a failure of commitment and effort, the Agency has failed the mining community.

## MSHA/OVERVIEW

The failure of the Agency is widespread and covers most of the major areas of Agency responsibility. Below, we review several principal areas of Agency responsibility.

### 1. Regulation Rewrite

The Department of Labor/MSHA is charged with the responsibility to develop, promulgate and revise as may be appropriate mandatory health and safety standards for the protection of life and prevention of injuries in coal or other mines. 30 U.S.C. - Section 811(a).

In early 1982, the Agency began a re-write of substantial areas of regulations under the auspices of the Vice Presidential Task Force on Regulatory Reform.

On May 5, 1982, the American Mining Congress and the Bituminous Coal Operators Association (AMC/BCOA) submitted to the

Vice Presidential Task Force on Regulatory Reform and to the Secretary of Labor its Regulatory Reform Proposal. Shortly thereafter, on May 28, 1982, the Vice President submitted the AMC program to the MSHA. Just over a month later, on July 9, 1982, MSHA published an advance notice of proposed rulemaking announcing that it intended to undertake the rewrite of certain sections of coal regulations limited to three subjects: roof support, explosives and blasting and ventilation. Public comment was solicited on these three subject areas. On July 19, 1982, the Assistant Secretary wrote to AMC/BCOA and the Vice President's office explaining that he had begun a regulatory review and that he wished to "move quickly to formulate concrete proposals which are responsive to the needs and concerns of the AMC, BCOA, and the entire mining community."

In response to the July 9, 1982 Notice of Proposed Rulemaking, AMC/BCOA on November 15, 1982, the last day for comments, submitted an overall reform package entitled "Coal Mine Safety and Health - Regulatory Reform Proposals (commonly known as the yellow book), which went far beyond the proposed rulemaking set out in the July announcement and encompassed numerous areas not discussed in the proposed rulemaking. However, based upon AMC's comments, the Agency then began a rewrite of the much broader regulations covered in the AMC proposal. In a letter to the then-Assistant Secretary we raised the question of whether AMC/BCOA had been permitted an unfair advantage because all other parties were limited to the proposed rulemaking as established in the July 9 announcement covering only roof control, ventilation, explosives and blasting. Furthermore, it was our contention that the Agency was using the industry proposals as the starting point for its own inhouse review to the disadvantage of all others as the public comment period had ended.[1]

However, the Agency accepted the AMC/BCOA proposal and began the closed internal rulemaking process covering a total of 15 subjects for review and rewrite.

On January 24, 1983, MSHA set up 15 committees for "Review and Rewrite of Part 75, 30 CFR. In all, 76 employees from both the national office and district offices were chosen to serve on these teams. The selection was based upon acknowledged expertise on the part of the individual in a particular subject area. Each committee was directed by a chairman.

The following day, January 25th, the Agency, perhaps concerned about undue influence, issued a memorandum acknowledging that the Agency had been requested to provide the names of the committee members to certain segments of the mining community. Concerned that the committee's deliberations might be disrupted after the public comment period had closed, a scheme was put in place which restricted and channelled communications both inside the Agency itself and with industry officials. Shortly after this "gag order" memo was circulated, several such contacts were attempted. First, on February 8, 1983, officials of the Clinchfield Coal Company requested a discussion with an individual committee member of the rewrite of Part 75,[2] and later that same month officials from Consolidation Coal Company asked to submit additional comments regarding certain provisions of the rewrite.[3] While both attempted contacts were directed through the MSHA legal counsel, it became clear that industry officials were taking an exceptional interest in this rewrite.

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[1]. Letter dated 3/17/83 from McAteer to Ford.

Apparently displeased by the "gag order", the AMC/BCOA wrote on March 3, 1982 requesting "the scheduling of discussions with MSHA's Technical Drafting Committee on matters of greater technical complexity, starting with ventilation, electricity and roof control and to consider proposals for procedural regulations."[4] The Assistant Secretary wrote back on March 18, 1983:

> "As you are aware, MSHA committees are presently reviewing comments received as a result of the notice in the Federal Register inviting such comments relating to Part 75, and are in the process of developing "preproposals" as a result of those comments. I am advised by the Solicitor that prudent rulemaking practice would be to preclude the committees from communication with the mining community in the drafting stage until after the preproposals are published in the Federal Register."

Upon completion, beginning in May, 1983, the committee proposals were then submitted to a review committee made up of the highest national level MSHA line personnel. This review committee, consisting of the original chairman, the division chiefs for the various Agency divisions, and the Administrator for Coal Safety and Health reviewed and signed off on the proposals. The proposals were then officially "transmitted" to the Office of Standards for publication in the Federal Register.[5]

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[2] Memo of February 8, 1983 re: Contacts: Division of Safety.

[3] Memo of February 28, 1983 re: Outside contact: Division of Safety.

[4] Letter from AMC/BCOA to Assistant Secretary, 3-3-82.

The electrical proposals were among the first to be completed by the Committee (dated May 1, 1983). They consisted of eight bound volumns totaling 366 pages. The committee had reviewed every electrical fatal and serious nonfatal accident occurring in the U.S. mining industry during the past several years. As well, they had reviewed all major explosions and had rewritten the regulations with these accidents and explosions in mind, proposing reforms which would eliminate the conditions which led to the causes of these accidents.

In his March letter to the AMC/BCOA, the Assistant Secretary had set out the Agency plan for the proposals once the committee had completed its task:

> It is our plan to convene the drafting committees as panels for discussion of their respective preproposals in open forums in the form of scheduled informal conferences during the comment period following publication in the Federal Register and before formal proposals are advanced. We look forward to your participation at those conferences as well as that of others in the mining community to assist MSHA in

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[5] The responsibility of the Office of Standards is limited to procedural functions; ensuring that proposed regulations are in the proper form to be published in the Federal Register, establishing deadlines for comments, compiling copies of comments, etc. The Office has no substantive function or technical expertise with regard to mining.

developing the most effective and responsible regulations attainable.[6]

However, at this point, the committee proposals were rejected. Although drafted by the best experts in the Agency and reviewed by a second committee of the highest line Agency personnel, both the proposals and the justifications were in large measure disregarded.

In their place, without committee members input or without Agency review, a "new" set of proposed regulations was produced. In several important areas, these virtually duplicated the AMC/BCOA proposals of November 15, 1982, "the yellow book". These initial proposals considered and rejected by the committee of experts became the official Agency published proposals.

In coal alone, 7 of the 15 subject areas were put on the "fast promulgation track" and published in the Federal Register as preproposals. No expert committee informal conferences, as envisioned by the Assistant Secretary in March of 1983, were held. At that time, we urged a withdrawal of these proposals and a return to the committee proposals. However, despite the widespread opposition and the obvious deficiencies of the proposals, the Agency has proceeded.[7]

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[6] March 18, 1983 letter from Assistant Secretary Ford B. Ford/MSHA to AMC/BCOA.

[7] At the present time, the electrical Proposed Rule is scheduled for publication in August, 1987 and the explosives and blasting Final Rule is scheduled for final enactment in September, 1987. The ventilation Proposed Rule is to be published in May, 1987; regarding roof control, the Final Rule is scheduled to be published in June of this year; procedures for approval final rule to be published in July, 1987 and mine plan approvals

The charts below set out examples of the expert committee's proposals, the initial AMC/BCOA position (the yellow book) and the final proposal.

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Proposed Rule to be published in May, 1987 and pattern of violations Final Rule to be published in May, 1987.

# VENTILATION

| ISSUE | EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|---|
| BLEEDER SYSTEMS | **Requires bleeder systems in every coal mine and recommends improvements in ventilation and evaluation of bleeder systems.** | **Coal operator should evaluate the need for bleeder systems.** | **No bleeder systems in mines with less than .25 percent methane.** |
| PRE-SHIFT INSPECTIONS | **Requires pre-shift examinations of idle areas in mines.** | No provision. | No provision. |
| 20 MINUTE METHANE TESTS | **Requires conducting methane tests every 20 minutes at working face.** | No provision. | No provision. |
| LINE BRATTICES | **Requires installation of line brattices at distance no greater than 10 feet from the coal face.** | **Eliminates requirement to keep the line brattice within 10 feet of the face.** | **Eliminates requirement to keep the line brattice within 10 feet of the face.** |
| SURFACE MINE FANS | **Requires inspection of the monitoring systems on surface mine fans at least every 7 days.** | **Requires inspection at least once every 30 days.** | **Requires inspection at least once every 30 days.** |
| BOREHOLES | **Requires drilling boreholes when mining within 30 feet beneath another mine and requires strict testing when mining near abandoned areas.** | No provisions. | No provisions. |
| VENTILATING GOB AREAS | **Requires sealing of gob areas where ventilation conditions cannot be determined.** | **Leaves option of sealing or ventilating gob areas.** | **Leaves option of sealing or venitaling gob areas.** |
| ACTIONS FOR EXCESSIVE METHANE LEVELS | **Requires ventilation in return airways to be adjusted when methane levels reach 1.0%** | **Ventilation adjusted at 1.0%** | **Increases permissible levels of methane in return airways to 1.5%** |

SOURCE: Oversight Hearings of Senate Labor and Human Resources Committee
September 25, 1986

## EXPLOSIVES

| ISSUE | EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|---|
| APPROVED BLASTING UNITS | Forbids impermissible blasting units from firing shots at the working face. | Permits impermissible blasting units. | Permits impermissible blasting units. |
| SHOOTING OFF THE SOLID | Forbids shooting off the solid without approval of District Manager whose decision must be based on the specific conditions of the mine. | Permits shooting off the solid. | Permits shooting off the solid. |
| FIRING PROCEDURES | Forbids firing more than one face in a working place at one time. | Permits firing more than one face in some situations. | Permits firing more than one face in some situations. |
| MULTIPLE BLASTING | Restricts the number of holes for firing a round in the coal face. | No restrictions. | No restrictions. |
| GALVANOMETERS | Requires continuity tests of blasting circuits by blasting galvanometers to prevent attempts to fire rounds which have broken or unwired connections in the round. | Does not require continuity testing. | Does not require continuity testing. |

SOURCE: Oversight Hearings of Senate Labor and Human Resources Committee
September 25, 1986

## ELECTRICAL

| ISSUE | EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|---|
| PANIC BARS | Requires panic bars which deenergize and activate emergency brakes on all self-propelled equipment. | No provision for panic bars. | No provision for panic bar activating brakes. Also exempts equipment with cabs from need for panic bars. |
| EXAMINATIONS AND TESTING | Requires that hazardous electrical circuits and equipment discovered during examinations be corrected or removed immediately. | Permits hazardous equipment to be used during a shift. | Permits hazardous equipment to be used during a shift. |
| GLOVES WHILE TROUBLESHOOTING AND TESTING | Requires that persons performing troubleshooting and testing wear gloves rated to the voltage of the circuit. | No provision. | No provision. |
| DISCONNECTING DEVICES | Prevents miners from inadvertently reenergizing circuits under repair by requiring that electricians keep the keys to disconnecting devices on their persons and tag the devices with their names. | No provision to protect against inadvertent reenergizing. | No provision to protect against inadvertent reenergizing. |
| ARCING ON TROLLEY WIRES | Requires devices on trolley wires to deenergize circuits when an arcing short circuit occurs. | No provision. | No provision. |

SOURCE: Oversight Hearings of Senate Labor and Human Resources Committee
September 25, 1986

## ROOF CONTROL

| ISSUE | EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|---|
| COAL AND ROCK OUTBURSTS | Requires protecting miners from coal and rock outbursts and recommends plotting coal and rock outbursts at each mine. | No provision. | No provision. |
| PILLAR RECOVERY | Expands pillar recovery requirements to minimize coal and rock outbursts. | Expands pillar recovery requirements. | No expanded provisions. |
| ATRS SYSTEMS | Requires ATRS systems in all mines. | Requires ATRS systems when mining height is 48 inches or more. | Requires ATRS systems when mining height is 42 inches or more. |
| REVIEW OF ROOF CONTROL PLAN | Requires mandatory six-month revision of roof control plan by operator and review of accident and injury experience at mine. | Revisions to roof control plan left to operator's discretion. | Revisions to roof control plan left to operator's discretion. |
| TORQUE WRENCHES | Requires torque wrenches on all roof bolting machines to insure that the security of overhead bolts will be checked. | Requires torque wrenches in working section. | Requires torque wrenches in working secton. |

SOURCE: Oversight Hearings of Senate Labor and Human Resources Committee
September 25, 1986

Two questions arise regarding the validity of our concerns here. First, if the rulemaking process is underway, why not simply make our case during the public comment? In some cases that comment period is passed; secondly in several areas comments which were submitted were disregarded by the Agency without full consideration.[8] Moreover, the use of the industry based proposals does not reflect the best thinking of the Agency personnel who are in the best position to know - the experts. While we are not of the opinion that these committee proposals are perfect, they represent the best thinking of a, hopefully, neutral government body. New regulatory proposals should come as close as possible to providing a level playing field for all interested parties to participate in a meaningful rulemaking. The use of the industry based proposals creates an unfair advantage and insurmountable burden just as would be the case if labor based proposals were wholeheartedly endorsed by the government and formed the basis of a rulemaking.

Second, is not the Federal Court the proper place to raise these objections once the rules have been finalized?[9] Ordinarily that would be the case. In this instance, however, the basis of the rulemaking process has been subverted. The Agency's attempt to provide the groundwork from which to build a successful rulemaking procedure was rejected in favor of one interested party's position. The industry based proposals (once rejected by the expert committee) form the basis of the proposals, so that the rulemaking is fundamentally flawed.[10] Any legal challenge, which must by definition be based upon that rulemaking process, is destined to fail.

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[8]. Comments of CEP, August 29, 1986: Electrical Standards.

[9]. 30 U.S.C. Section 811(d).

If these proposed regulations are allowed to go into effect, the results from the standpoint of miners' safety could well be disastrous. In electricity, one area where the substitution is most pronounced, the changes and justifications based upon fatal accident reports were simply abandoned and substitutions made which let stand known dangers.

In the area of ventilation, changes were also made which diminished the protection offered the miners, a position which is against both common sense and against the language of the Act and the regulations. Contrary to the Act's language, in several instances these newly proposed regulations resulted in a diminution of safety and health standards and, therefore, are contrary to the requirements of the Act, as set out in Section 811(a)(9).

> No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard.

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[10] The MSHA Expert Committee submitted changes to the Office of Standards, along with justifications. In a number of cases, the task force proposals and justifications were not disputed nor questioned, they were simply disregarded; substitute sets of regulations which included no justifications were submitted by MSHA managers who are less expert than the committee members. Thus, the rulemaking record has become irrelevant.

Indeed, the legislative history of the Act in explaining this provision states:

> Section 102(a)(7) requires that in promulgating or revoking standards or in publishing any rule under Title 1 the Secretary shall not reduce the protection afforded miners below that of any standard previously in effect.[11]

In addition, the Chairman of the Subcommittee, in describing the Secretary's standard making responsibility stated:

> The ultimate goal of this bill is to provide the maximum amount of protection for miners; in cases of doubt, both in enforcement and in standard making, miners should have the benefit of the broadest possible interpretation and application.[12]

Conclusion

The regulatory process has been tainted by the action of certain Agency officials. There needs to be a review of this process and a renewed effort to rewrite the regulations so that they improve the health and safety of the miners.[13]

On December 15, 1986, we wrote to the Secretary of Labor setting out these concerns and proposing that the Secretary appoint an advisory committee which could review the proposed regulations and the expert proposals and could analyze the justifications for each change as set out by the experts.[14] The Act provides "The Secretary. . . may appoint other advisory committees as he deems appropriate to advise him in carrying out the provisions of this Act. 30 U.S.C. Section 812(c), 811(a)-(1). As of this time, the Secretary has not responded to that letter. We respectfully request that this Committee in its oversight capacity urge the Secretary of Labor to empanel such an advisory committee and see that the regulations are given the scrutiny necessary to see that they in fact do improve the safety of the miners.

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[11]. Legislative History of the Federal Mine Safety and Health Act of 1977, Senate Committee Print p. 92

[12]. Id. p. 85.

[13]. The Agency has recently begun an informal review of these proposals and has submitted them to a set of consultants from industry and the academic community. Given the flawed nature of the rulemaking process, such informal review is inadequate.

## 2. Penalties: Criminal - Civil

### Introduction

The Mine Safety Act provides in Section 110 (30 U.S.C. Section 820) a series of penalty provisions both civil and criminal which are designed to encourage compliance on the part of mine operators with the various provisions of the Act. These provisions are intended to work in conjunction with the most direct economic sanction, the closure order authority of the Secretary.[15] It is impossible to determine the degree of use or effectiveness of the closure order authority of the Secretary. The number of closure orders issued per year is presently unavailable. It is not compiled by MSHA nationally nor are records kept at the district levels which distinguish between a closure order for a part of the mine versus the entire mine.[16] Thus, a review of effectiveness of the penalty provisions must rely upon the criminal and civil penalty sanctions.

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[14] Letter, dated 12/15/86 to William E. Brock, Secretary of Labor from J. Davitt McAteer on behalf of the C.E.P.

[15] This bill's mechanism for insuring the safety and health of miners has two approaches, however. Not only is there a civil penalty system by which the operators are to be encouraged to effect lasting compliance with the applicable standards, but the mine safety and health administration could also employ a broad range of closure orders which are intended to identify unusually hazardous conditions and insulate miners from these conditions until they are corrected. This closure order proce-

Criminal Provisons

The Mine Act provides for criminal penalties for mine operators who willfully violate mandatory health and safety standards. Section 110(d), 30 U.S.C. Section 820. The criminal sanctions provisions of 1977 are based upon the Coal Mine Safety and Health Act of 1969.

The 1977 Legislative History of the Act describes the criminal provisions of the Act. These are:

> Section 111(d) which provides for fines of not more than $25,000 or imprisonment of not more than one year or both for willful violation of the Act or any standard, rule, order or regulation promulgated pursuant to the Act;
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> Section 111(e) which provides for a fine of not more

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dure is present in both of the current mine safety laws but is much more highly developed in the Coal Mine Act, and it is the procedure of that law which serves as the basis for the closure order procedure in my bill. Legislative History, Senate Committee Print (p.85).

[16] Closure orders are sometimes issued which close a machine or specific section of the mine and which do not effect overall production.

than $1,000 or imprisonment of not more than 6 months for any person giving advance notice of any inspection.

Section 111(f) which provides for a fine of not more than $10,000 or imprisonment for not more than 5 years or both for knowingly making false statments; and

Section 111(i) which provides for a fine of not more than than $25,000 or imprisonment for not more than 1 year or both for distribution of mine equipment which does not comply with specifications of the Act.[17]

Between 1969 and the present, there have only been 38 criminal prosecutions under the criminal provisions of the statute,[18] or just over two per year. During this same 18 year period there have been 2029 fatal accidents including 30 disasters. MSHA has cited mine operators 1,665,886 times for civil violations and has collected $201,745,744 in civil fines. Given these comparisons, it is difficult to imagine that the Agency is utilizing the full extent of its criminal investigative authority.

The development of the criminal sanctions provisions of the Mine Act has been slow and torturous. During the ten years the Coal Act was in effect (1969-77), there were six criminal prosecutions only, two of which resulted in criminal sanctions.

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[17]. Leg. History of Fed. Mine Safety and Health Act, 1977, Committee Print p. 661.

[18]. MSHA has no records of prosecutions for 1976, 1977.

It was not until 1974 that the Agency (under Department of Interior at the time) established the Special Investigation Division in the Office of Technical Compliance charged with the responsibility of investigating accidents and occurances which migh give rise to criminal actions. After 1977, the Office was formalized at the national headquarters (until this time, special investigators in the field were under the authority of the district managers). Still not an effective force, the Office expanded its efforts and direction of field staff was handled from the national headquarters. In addition, a supervisory special investigator was appointed in each district and a training program for investigators was established. Yet, even in its heyday, 1978-1982, the special operation division's activities resulted only in a minute number of referrals to the U.S. Department of Justice. Indeed, since 1981 only 58 cases have been referred for prosecution by the Agency.

The criminal sanctions provision of the Act has been in great measure simply ignored. During the last three years the number of cases referred for prosecution has dropped dramatically (1984-15 down to 1986-5).[19] However, even this modest level of activity was considered unacceptable. In March of 1986, the Assistant Secretary, expressing displeasure at the referral of cases to the Justice Department, established a convoluted scheme which increased paperwork and difficulty required, on the part of the appropriate office, to refer cases to the Department of Justice. In a memorandum dated 12/19/85, the Assistant Secretary indicated that he wished to subject referrals to an element of political judgment.

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[19]. Source: MSHA Office of Technical Compliance and Investigation 3-4-87.

In a memorandum prepared at the request and direction of the Assistant Secretary from the Administrators for coal and - metal/nonmetal regarding procedures for referrals to the Department of Justice, the new requirements for referrals are outlined.

> 1. Once a preliminary review of the case indicates that the technical elements necessary to establish a possible criminal violation of the Mine Act are present, the matter will be evaluated to determine if there are mitigating circumstances present which do not make the situation appropriate for prosecution.
>
> 2. This evaluation will involve insuring that the factors listed below were fully considered at the field level. In addition, an independent review of these factors will be made by the Headquarters staff. The factors to be considered are:
>
> > a) Are the accident and injury rates at the mine worse than those at other similar operations?
> >
> > b) Does the enforcement history at the mine indicate that the operation has been subject to other sanctions such as 104(d) orders or 104(b) orders on a recurring basis?
> >
> > c) Is this a situation where a good faith dispute existed between MSHA and the operator over the proper method of dealing with a particular condition or practice?
> >
> > d) Do the anticipated positive benefits of a criminal prosecution in this case outweigh any possible negative factors which could affect health and safety efforts?
>
> 3. Following this review, the case will be referred to the Office of the Solicitor for an independent review for legal sufficiency.
>
> 4. If these reviews result in a tentative determination that the case warrants referral to the Department of

Justice, the matter will be forwarded to the Office of the Administrator to determine if there are other mitigating circumstances that should be considered prior to forwarding the case to the Assistant Secretary. A briefing will then be scheduled with the Assistant Secretary which will include a discussion of all factors considered, including the advantages and disadvantages of proceeding with a referral of the case to the Department of Justice. (Memo, 3-11-86)

The new procedures for referrals are so clearly designed to permit considerations of factors other than possible criminal violations or conduct, they are known informally among government lawyers as "The Friends Exemption to the Criminal Process" -- meaning that referrals will be reviewed for other consideration. Since this memo was promulgated only one (previously pending) case has been referred to Justice.

Finally, the pattern of case development and prosecution points to a failure on the part of the Agency to properly enforce the criminal provisions of the Act. Twenty-three of the 32 cases prosecuted between July, 1979 and March, 1985 were located in one district, the Western District of Virginia, and were brought by one special prosecutor. That special prosecutor was then removed as special prosecutor and transferred to Washington.

A similar record exists in the metal/nonmetal sector where one or two dedicated special investigators have attempted to make effective enforcement a reality and have been criticized or shunned by their superiors.

Presently, special investigators are generally considered outcast by district officials who see them as informers against whom information and cooperation is to be withheld.

They have not been given the authority or encouragement needed to complete their jobs; they have not received backup, either at a district or national level to become an effective force in combatting mining death and injury. If the overall mission of this Agency were other than life or death, one might be able to argue that the special investigator role is or should not be significant, but it is not.

Civil Penalties

The basic penalty provisions of the Mine Act are set out in Section 110 (30 U.S.C. Section 820) (Supp. IV. - 1980). The three civil penalty provisions are 110(a), 110(b), and 110(g). The primary penalty section of the Act is Section 110(a) which mandates a civil penalty of up to $10,000 be assessed against a mine operator for each violation of the Mine Act committed by such operator.

Section 110(b) sets out a discretionary penalty of not more than $1,000 per day against an operator who fails to correct a violation within the period permitted by 30 U.S.C. Section 820(b). During the 18 years since the Act's passage, this section has never been employed.[20]

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[20]. The Agency's position is that most violations are promptly abated and instead of issuing the $1,000 penalty, inspectors may issue a withdrawal order directing that all persons are to be removed from the affected areas and prohibiting them from returning until an inspection determines that the violation has been abated.

The Agency takes the position that the length of time that the condition remains uncorrected is normally not relevant so long as miners are not exposed to a hazard. The Agency has relegated Section 110(b) to an ancillary position, in theory to

Section 110(g) imposes a fine of up to $250 against any miner who willfully violates any mandatory safety standard related to smoking material. This provision of the Act has never been invoked during the 18 years since the Act's passage despite evidence that smoking is a widespread practice. MSHA investigators of three fatal mine disasters since 1980 found smoking materials and cigarette butts in the mines. Thirteen men died as a result of one accident in which federal investigators concluded that "a miner used a cigarette lighter, igniting a methane-air mixture causing the explosion. "The failure of miners and management to abide by the smoking prohibition was one of the direct causes of the explosion." Packs of cigarettes were also found in the lunch buckets of miners. In two other disasters, smoking materials were found at and near the site of the explosions.

Theoretically, the Mine Act and its predecessor, the Coal Act, contain the strongest penalty provisions, civil and criminal, of any federal health and safety law. Unfortunately, the Agency charged with the Act's enforcement has watered down the civil penalty provision both through regulations and in administration. This provision, never strictly enforced, has not achieved its purpose: the deterrence of violations of mandatory

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be used in instances where a mine operator is operating in defiance of a withdrawal order.

Criminal sanctions under the Federal Mine Safety and Health Act of 1977, Ryan, Dennis M. & Schell, Ronald J. (the present and past director of the Special Investigation program of MSHA, 85 W.V. Law Review No. 4, p. 757.

health and safety standards. Why the program failed is readily apparent: the fines are not high enough to achieve the purpose of deterring future violations of the Act. In short, the mine operators are not complying with the law and the penalty provisions are not at a sufficient level to cause them to make the effort to comply in the future. In 1986, for example, eighteen years after the passage of the Act, in the coal industry alone, there were 100,969 violations issued and assessed. This number, lower by 4,000 than in previous years, is two thousand above 1978. The point appears to be lost on both the mine operators and the MSHA that there should not be 100,000 violations of an 18 year old law.

The civil penalty provisions have become even less meaninful since the introduction of the $20.00 penalty.

On May 21, 1982, MSHA published a new regulation rule modifying the structure of the civil penalty provision. The civil penalty provisions in effect up to that time used a formula system for determining the amount of a fine. Congress, in both 1969 and 1977, had set out the formula for determining the amount of penalties.

Section 30 U.S.C. Section 820(i) sets out the criteria:

> (i) The Commission [The Federal Mine Safety and Health Review Commission] shall have authority to assess all civil penalties provided in this Act. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after

> notification of a violation. In proposing civil penalties under this Act, the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors.

Yet, in defiance of this Congressional mandate and contrary to the actual language of the Act, MSHA created a fixed $20.00 penalty for "less serious violations."

Since the creation of this provision, penalties and their effectiveness have declined, as mine operators have adopted the philosophy that the $20.00 is simply an accounting cost, a cost of doing business.

The most reliable indication of the impact of the assessment system's ability to achieve compliance is in the cost of assessments as the cost of doing business. We can reliably ascertain the average of actual dollars paid. The operating mines in the nine year period 1978-86 paid an average of $2,388 in assessments per year. Based on the tonnage produced of approximately 800,000,000 tons per year, the mines paid an average of 1.6 cents per ton in assessments. This would appear to be a minimum and easily absorbable cost of doing business.

Table 1B analyzes the data on assessments and payments provided by MSHA and shown in Tables 1 and 1A. Since 1980 in coal the number of violations assessed has dropped by 37,000 or 27% and the amount assessed has declined by $9,100,000, a 47% decline, while in metal/nonmetal the number assessed has remained virtually the same while the amount assessed has dropped - $2,000,000 or 53%. Over all, the number of violations assessed for 1980 (166,289 has dropped to 129,878 (22%) while the amount assessed has virtually been cut in half (47%).

While we have been unable to obtain a breakout of the $20.00 penalty provision and its effect from the Agency, the decline of assessments compared to the violations assessed in both coal and metal/nonmetal have been profound.

(See Attached Tables.)

## TABLE 1
## NUMBER OF VIOLATIONS AND DOLLARS ASSESSED

| | COAL | | METAL | | TOTAL | |
|---|---|---|---|---|---|---|
| CY | # vios assessed | $ amount | # vios assessed | $ amount | # vios assessed | $ amount |
| 1971 | 48,282 | $ 6,182,702 | 0 | 0 | 48,282 | $ 6,182,702 |
| 1972 | 61,749 | 12,560,154 | 0 | 0 | 61,749 | 12,560,154 |
| 1973 | 39,451 | 8,632,537 | 0 | 0 | 39,451 | 8,632,537 |
| 1974 | 125,219 | 20,879,454 | 0 | 0 | 125,219 | 20,879,454 |
| 1975 | 96,434 | 10,471,259 | 0 | 0 | 96,434 | 10,471,259 |
| 1976 | 85,877 | 8,183,180 | 0 | 0 | 85,877 | 8,183,180 |
| 1977 | 209,112 | 22,520,761 | 0 | 0 | 209,112 | 22,520,761 |
| 1978 | 98,410 | 16,496,976 | 25,203 | $1,627,427 | 123,613 | 18,124,403 |
| 1979 | 128,183 | 17,455,613 | 44,841 | 4,238,962 | 173,024 | 21,694,575 |
| 1980 | 137,842 | 19,512,943 | 28,547 | 3,135,849 | 166,289 | 22,648,792 |
| 1981 | 113,482 | 14,284,034 | 23,562 | 2,103,407 | 137,044 | 16,351,441 |
| 1982 | 113,392 | 9,089,131 | 5,852 | 403,977 | 119,244 | 9,524,108 |
| 1983 | 98,748 | 6,421,519 | 14,746 | 605,567 | 113,494 | 7,027,086 |
| 1984 | 104,304 | 8,311,127 | 20,403 | 1,002,275 | 124,707 | 9,313,402 |
| 1985 | 104,432 | 10,372,098 | 23,761 | 1,373,524 | 128,193 | 11,745,622 |
| 1986 | 100,969 | 10,409,306 | 28,909 | 1,485,711 | 129,878 | 11,895,017 |

SOURCE: MSHA Office of Public Information, 3-4-87

## TABLE 1A

## NUMBER OF VIOLATIONS AND DOLLARS COLLECTED

| | COAL | | METAL | | TOTAL | |
|---|---|---|---|---|---|---|
| CY | # vios paid | $ amount | # vios paid | $ amount | # vios paid | $ amount |
| 1971 | 18,575 | $ 1,345,675 | 0 | 0 | 18,575 | $ 1,345,675 |
| 1972 | 29,505 | 2,891,600 | 0 | 0 | 29,505 | 2,891,600 |
| 1973 | 12,139 | 1,143,351 | 0 | 0 | 12,139 | 1,143,351 |
| 1974 | 74,039 | 5,000,825 | 0 | 0 | 74,039 | 5,000,825 |
| 1975 | 122,578 | 9,528,139 | 0 | 0 | 122,578 | 9,528,139 |
| 1976 | 113,150 | 8,446,058 | 0 | 0 | 113,150 | 8,446,058 |
| 1977 | 167,601 | 12,805,427 | 0 | 0 | 167,601 | 12,805,427 |
| 1978 | 113,878 | 13,203,571 | 18,575 | $1,125,083 | 132,453 | 14,328,654 |
| 1979 | 117,533 | 16,293,140 | 40,424 | 3,259,549 | 157,957 | 19,552,689 |
| 1980 | 122,131 | 17,089,021 | 29,749 | 2,799,623 | 151,880 | 19,888,644 |
| 1981 | 101,504 | 13,010,576 | 24,264 | 2,128,931 | 125,768 | 15,139,507 |
| 1982 | 97,442 | 8,627,005 | 6,422 | 517,012 | 103,864 | 9,144,017 |
| 1983 | 88,110 | 5,524,629 | 13,223 | 588,590 | 101,333 | 6,113,219 |
| 1984 | 93,675 | 7,084,194 | 19,112 | 864,762 | 112,787 | 7,948,956 |
| 1985 | 92,258 | 8,673,763 | 22,556 | 1,177,394 | 114,814 | 9,851,157 |
| 1986 | 85,870 | 8,624,763 | 27,575 | 1,451,651 | 113,445 | 10,076,414 |

SOURCE: MSHA Office of Public Information, 3-4-87

## TABLE 1B

### COAL ONLY
### ANALYSIS OF VIOLATIONS PAID AND ASSESSED *

|  | # Mines | % Vios. Not Pd. | Amt. Not Paid (000 omitted). | PER MINE $ Total Average Paid | PER MINE Average Cost Per Ton** |
|---|---|---|---|---|---|
| 71 |  | 61.5 | 4,837 |  |  |
| 72 |  | 52.2 | 9,669 |  |  |
| 73 |  | 69.2 | 7,489 |  |  |
| 74 |  | 40.9 | 15,879 |  |  |
| 75 |  | -27.1 | 943 |  |  |
| 76 |  | -31.8 | -262 |  |  |
| 77 |  | 19.9 | 9,715 |  |  |
| 78 | 6090 | -15.7 | 3,293 | 2168 | 2 cents |
| 79 | 5755 | 8.3 | 1,162 | 2831 | 2 cents |
| 80 | 5531 | 11.4 | 2,424 | 3090 | 2 cents |
| 81 | 5830 | 10.6 | 1,237 | 2232 | 2 cents |
| 82 | 5375 | 14.1 | 462 | 1605 | 1 cents |
| 83 | 4841 | 10.8 | 897 | 1121 | 0.7 cent |
| 84 | 4982 | 10.2 | 1,227 | 1422 | 0.8 cent |
| 85 | 4546 | 11.7 | 1,698 | 1908 | 1 cent |
| 86 | 4072 | 15.0 | 1,785 | 2118 | 1 cent |
| TOTAL | 5225 | 13.0% | $ 62,455 | 2388 | 1.6 (cent) |

---

* All figures, except the number of mines, are calculated by MSHA on a calendar year basis. Number of mines is shown by fiscal year. In this case, analysis based on these figures is valid because the number of mines does not change signficantly between the calendar and fiscal year as evidenced by the long term trend.

** Source of tonnage figures: MSHA reports; averaging more than 800,000,000 tons per year.

### 3. Accountability

Perhaps the Agency's single largest shortcoming is its failure to correct its own shortcomings and to use the knowledge gained from one accident to prevent the next.

The Agency has turned its back on its own shortcomings and ignored the failures of its own people. Both on a personal basis and a system-wide basis, the Agency has not been willing or able to admit its failures and take the necessary, if sometimes unpleasant, steps to discipline or discharge errant inspectors or correct whole programs. Indeed, the Agency has engaged in coverup activity to protect its own personnel and has denied its own shortcomings, choosing to ignore rather than resolve problems. The consequence of this refusal has been and potentially could be the continuation of unnecessary death and injuries in the mines.

During the last six years, the Agency has conducted at least three internal reviews or evaluations. In each instance, the Agency's findings have been less than encouraging. The reports note numerous shortcomings which could have a profound effect on the safety of miners and on the effective conduct of the Agency inspection.

#### (A) Roof Control

In 1980, the Agency evaluated the Roof Control Enforcement Program. That report, entitled "Evaluation Report of Coal Mine Safety and Health Roof Control Enforcment Program", January 29, 1980, summarizes the shortcomings in its finding:

> The roof control plan approval program in its present format has not provided the enforcement tool intended by the 1969 Act.
>
> Development and formulation of roof control plans by mine operators has not been instituted as mandated by the 1969 Act.
>
> Present roof control regulations, criteria and guidelines have not been adequate for effective enforcement.
>
> Effective supervision of the roof control program by the national office and the district managers has not been established.
>
> Adequate communication between the inspectorate, roof control specialists and district managers has not been established.
>
> Training of the inspectorate in roof control has not been sufficient for strong enforcement of the roof control regulations and approval plans.
>
> The number of fatalities from falls of roof, face and ribs as compared to other causes indicates that emphasis has not been placed on prevention of roof fall-type fatalities.

That study, the single most comprehensive review of roof control regulation, also set out a list of recommendations:

> Short Term:
>
> Require mine operators to develop and formulate roof control plans.
>
> Institute a uniform system for approving plans.
>
> Cause guidelines to be followed in approval of roof control plans.
>
> Institute issuance of citations under Section 75.200 when a determination is made that mine personnel are inadequately trained in roof control.
>
> Direct spot inspections to roof control and cycle of operations.
>
> Provide for inspectors' and inspection supervisors' input into roof control plans.

Require mine operators to revise and update roof control plans when minimum requirements are exceeded on a continuing basis.

Use investigations of unintentional roof falls as a tool to require revision of plans.

Implement a system to ensure that established policies are followed.

Incorporate amendments to roof control plans into the approved plans.

Provide flexibility for miner representatives' input into roof control plans.

Long Term

Promulgate a revision to Subpart C - Roof Control.

Provide additional training for the inspectorate in roof control.

Provide additional slots for roof control specialists for assignment to field offices.

Develop a means of providing more time for inspectors to spend on active working sections.

Review all policy memoranda and identify those still effective.

Those recommendations, to our knowledge, have never been implemented.

(B) Ventilation

In 1983, the Division of Safety completed the Evaluation of Coal Mine Safety and Health's Ventilation Enforcement Program. That study, conducted between 1981 and 1982, identified the following items as being of such a serious nature that they deserved special concern:

Sealing of Ventilation of Pillared or Abandoned Areas: A serious finding made by the evaluation team was that 28 of the approved ventilation and methane and dust control plans reviewed, that contained pillared and abandoned areas, indicated that such areas were not effectively ventilated or sealed.

Conditions represented on some of the approved ventilation plan mine maps in nine of the ten districts are very similar to those that existed in Consol No. 9, prior to November 20, 1968. (A disaster occurred at this mine on November 20, 1968, killing 78 miners.)

Ventilation of Belt and Trolley Haulage Entries: Ventilation plans of 43 mines in seven districts did not provide sufficient information to determine how belt and/or trolley haulage entries were being ventilated. The importance of positive ventilation in belt and trolley haulage entries was clearly demonstrated in two major mine explosions since the year 1969. (Greenwich and Ferrell.)

The following is a list of audited criteria the District Managers are to use in approving ventilation system and dust control plans as well as the number of plans that did not address or comply with the criteria. Criteria was omitted if the information is required by regulations or other criteria or are of such a nature that they cannot be audited during an office visit.

| Criteria | No. of Deficiencies |
|---|---|
| 75.316-2(a) | 12 |
| 75.316-2(b) | 38 |
| 75.316-2(c) | 26 |
| 75.316-2(d) | 79 |
| 75.316-2(f) | 5 |
| 75.316-2(h) | 15 |
| 75.316-2(i) | 9 |
| Total | 184 |

In addition, the report cites a list of MSHA policies and guidelines which were being violated and shows the number of unauthorized variances from the policies and guidelines amounted to a total of 365.

Finally, the report notes a list of the regulations audited during the ventilation survey with the number of deficiencies noted. Twenty four specific regulations are cited and a total of 524 deficiencies are found.

| Regulations | No. of Deficiencies |
|---|---|
| 75.302-4(a) | 7 |
| 75.302-4(c) | 1 |
| 75.316-1 | 1 |
| 75.316-1(a) | 2 |
| 75.316-1(a)(1) | 40 |
| 75.316-1(a)(3) | 15 |
| 75.316-1(a)(6) | 4 |
| 75.316-1(a)(7) | 31 |
| 75.316-1(a)(8) | 13 |
| 75.316-1(a)(9) | 17 |
| 75.316-1(a)(10) | 119 |
| 75.316-1(a)(11) | 100 |
| 75.316-1(a)(12) | 20 |
| 75.316-1(a)(13) | 1 |
| 75.3161(b)(1) | 4 |
| 75.3161(b)(2) | 0 |
| 75.3161(b)(3) | 29 |
| 75.316-1(b)(4) | 5 |
| 75.316-1(b)(5) | 28 |
| 75.326 | 2 |
| 75.327 | 2 |
| 75.329 | 23 |
| 75.330 | 45 |
| 75.1105 | 5 |
| Total | 524 |

This study has never been released nor has it been acted upon by MSHA. MSHA does not dispute the report's findings but takes the position it has never been adopted as official Agency position (Letter 3/6/87).[21] The report, however, was submitted to MSHA district managers who were asked to provide comments. The great majority were in accord with the report;

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[21] March, 4, 1987 MSHA Response to FOIA request of July 9, 1986.

however, since that time, to our knowledge, no steps have been taken to implement the findings of this report.[22]

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[22] The failure to ventilate or seal abandoned workings is perhaps one of the most dangerous failures of MSHA. These abandoned workings liberate methane ($CH_4$) and other gases and oxizidation frequently occurs. If a fire or ignition occurs in the active or working mine, the presence of an improperly sealed or abandoned working creates a potential for an explosive reaction as occurred in Farmington (1969). Indeed, one major impetus for the 1969 Act was this occurance; thus, the Legislative History and the Act itself contain explicit provisions governing ventilation of abandoned and idle workings.

Senator Williams in the Report on the Act specifically described the requirement:

> Require that abandoned areas be effectively sealed or effective bleeder systems installed;
> Legislative History/Federal Coal Mine Health and Safety Committee Print (3/1970), p. 35.

Further, in the section by section descriptions, the danger is described:

> Section 204(M) - This section requires that the operator cause an inspection of idle and abandoned areas for methane, oxygen deficiency, and other dangerous conditions by a certified person as soon as possible, but not more than 3 hours before other persons may enter or work in such areas, but would permit persons, such as pumpmen, who are required regularly to enter such areas to make such an examination for themselves if they are trained and qualified in the use of instruments to detect methane and oxygen deficiency.
>
> Idle and abandoned areas of a mine ordinarily are not maintained as carefully as active working places. Therefore, conditions in these areas are likely to deteriorate rapidly, and the areas may contain numerous hazards, such as accumulated gas and bad roof. Rather frequently, pumps are installed in idle areas, and materials are recovered from abandoned or idle areas, making it necessary for workmen to enter and perhaps work therein for brief periods.
>
> Id. p. 61.

Accident Reporting and Auditing

In 1970/71, the General Accounting Office, at the request of Senator H. Williams, reviewed the problems encountered in implementing the 1969 Act. Among their findings, the GAO reported that:

> The team that investigates mine accidents usually includes Bureau personnel who have been involved in prior inspections of the mine or related activities or who are subordinate to officials responsible for carrying out these activities. In such cases, these personnel, in effect, are required to evaluate their own previous performance or that of officials to whom they are responsible. GAO believes that there should be greater independence in accident investigations.[23]

Two years later in a 1973 report, the GAO reported that the Bureau had not agreed with its previous recommendation but had proposed national participation in the investigations of multiple fatalities.[24]

As a result of the GAO report, national officials began to participate in multiple fatal investigations in an informal manner. In February of 1979, a policy memo set out as the responsibility of the Division of Safety -- the investigation of multiple fatal accidents.[25] Beginning in November of 1980, personnel from the MSHA national office conducted the investigations and wrote reports of every multiple fatal accident until the spring of 1986. These reports covered approximately 18 accidents accounting for in excess of 200 deaths and, most significantly, included an analysis of the Agency's own conduct.[26] In 1985, we requested under the Freedom of Information Act the release of these reports; MSHA denied our request. In addition to the individual accident reports, several other documents were identified which went beyond the multiple fatal investigation. These included audits of certain MSHA field offices and a review of the adequacy of training received by MSHA personnel.

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[23]. Problems in Implementation of the Federal Coal Mine Health and Safety Act of 1969. GAO Report B-170686 (p. 2).

[24]. Follow-up on Implementation of the Federal Coal Mine Health and Safety Act of 1969. GAO Report (July 5, 1973).

[25]. 2/20/79 Memo: Investigation of Multiple Fatalities (from Potter to Carter et al.).

As a result of a suit filed in the U.S. District Court for the District of Columbia on behalf of the widows of one of the disasters, numerous documents were released. These reports point to a broad scale failure on the part of the Agency to properly conduct and carry out its function of enforcing the Act.

In early 1986, this national review and reporting on multiple fatals was summarily stopped. No memorandum or official policy statement was provided, but following the accident at the Consolidation Coal Company at Loveridge Mine where 5 men were suffocated, the national office personnel were simply told that the MSHA district officials would be in charge of the investigation and would write the report. The Agency was, in the words of one observer, not about to examine its own shortcomings but it was going back to the old system of delay and denial.

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[26]. A public report of each accident is released which omits any negative reference to MSHA's own conduct or to the Agency's complicity which contributed to or caused the accident or events which led up to the accident. Since the Agency frequently is involved in mine plan approval, etc., their role/approval is often at issue.

For a brief period of approximately 5 years covering 20 or so multiple fatals, the Agency's own conduct was examined and found seriously wanting. Instead of correcting the conduct, the Agency chose instead to close down the system which raised the questions.

### 4. Education and Training

Despite the fact that the U.S. is among the largest producer of coal, and metal and nonmetalic minerals in the world, the requirements for education and training for both miners and supervisors are the least stringent of any developed mining country. Moreover, beginning in 1982, the Department has taken steps to downgrade the education and training program. The first major action related to mine safety by this Administration was the closing of the eight Education and Training Centers and the reassignment of education and training personnel to non-inspector roles within the various districts in 1982.[27]

Training in the United States is primarily the responsibility of the mine operators, and until 1977, training of miners in this country had been regulated only by the states.

Under the Federal Coal Mine Health and Safety Act of 1969, Congress gave the Department of Interior responsibility for training. Training regulations were informally proposed and public meetings were held in 1974 and 1975, but these proposed regulations were superseded by the passage of the Federal Mine Safety and Health Amendments Act of 1977. Section 115,( 30 U.S.C. Section 825) of the 1977 Act provids mandatory health and safety training requirements and requires the Secretary to promulgate regulations within 180 days of the effective date of the Act.

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[27] On April 1, 1982, the eight MSHA Education and Training Centers were closed and responsibility transferred to the Districts.

The regulations provide education and training requirements for miners in coal mines, metal mines and other non-metal mines. There are no requirements for supervisors. (Sand, gravel and related industries have lobbied a budgetary exemption for several years.)

## Supervisory Training and Certification

Historically mining states, not the federal government, have determined the qualifications and controlled the certification of mine foremen and other supervisors. Unfortunately, these programs do not consistently cover all levels of supervision, and have been notoriously inadequate in meeting the needs of the industry. Because of their limited scope and random applicability, state programs certifying foremen and preshift examiners or fire bosses do not provide the necessary training and testing to ensure well-trained, competent managers or supervisors at any level, and ironically exhibit a particular weakness with respect to the highest levels of management.

Following the 1974-75 public hearings, MESA decided against further pursuing the supervisory certification and qualification scheme, and instead split the proposed regulations into proposed training regulations for miners and a temporary certification and qualification regulation for supervisors, which simply allowed state certification (where it existed, and in whatever form) be adequate for fulfilling the requirements of the Act.[28]

These temporary certifications, since that time, have been granted pro forma. In sum, eighteen years after the enactment of a federal law which created the authority to ensure the competence of American mine management, the extent of MSHA's regulatory certification over such personnel consists of these perfunctory 6-month permissions. There continues to be no meaningful federal requirements for the qualification or certification of mine supervisors.

Compared with the managerial hierarchies found in foreign mines, all of which require a qualification of competence in accordance with the responsibilities of the position, the shortcomings of the American system are apparent.[29]

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[28] W.V. Law Review, Vol. 82, No. 4, p. 1015. Where the state certification or qualification requirements are nonexistent, or inapplicable to particular regulatory requirements, each mine operator must simply file an application for a six month temporary certification (which is renewable) based upon his statement that the supervisor has a certain amount of experience.

On its face, the state certification program is inadequate. A review in 1980 of eight of the largest coal producing states shows that the state requirements for certification do not comport with the realities of the industry. For example, none of the eight largest coal producing states required any certification of mine superintendents beyond that of foreman's papers. Moreover, some states, for example West Virginia and Illinois, do not even require that the superintendent have foreman certification. Thus, the absurd condition can and does exist in which a mine superintendent has no state or federal certification whatsoever. Id., p. 1015.

Although meaningful comparisons between systems of training and certification for coal miners in various countries are not easily drawn, several facts are clear. Coal mining is the most dangerous occupation in all industrialized nations; yet, in spite of the inherent hazards that exist in only nominal variation throughout the world, a miner is notably safer in the countries of Great Britain or West Germany. A logical explanation for this divergence is that the training and supervisory certification requirements in the United States are less thorough than those of Great Britian and West Germany.[30]

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[29] Id., p. 1017.

[30] The American system of training and certification does not compare well in several specific areas. The United States has the shortest required training period for new entrant underground miners of any country surveyed.

The absence from the American system of training face requirements, controlled supervised periods before working alone, extended training refresher programs, and requirements controlling the movements of new miners all contribute to an overall training program which rejects proven experience and condemns miners as well as supervisors to injuries and even deaths which are avoidable, unnecessary, and have been eliminated in other mining countries.

The new-task training requirements in the United States are likewise the least stringent in terms of hours and topics covered. W.V. Law Review, Vol. 82, No. 4, p. 937, Comparative Study of Training and Supervisory Certification, McAteer, J. Davitt and L. Thomas Galloway.

## 5. Accident Prevention: Statistical Analysis/Use of Information

The MSHA has the largest data base on accidents of any Agency in the country. Beginning in 1910, the Congress authorized the collection of information on accidents and accident causes.

### Underreporting

Unfortunately, in recent years, there is evidence of widespread underreporting of mine accidents. Fatal accidents rarely go unreported but the reporting of disabling and non-disabling accidents today is suspect.

In 1986, this committee heard from the GAO that in one pilot study a 14% discrepancy between accidents which were reported to the state and those reported to MSHA had occurred. A number of well publicized cases have focused attention on the underreporting practices of several major coal producers. This problem exists for several reasons:

(1) Insurance premiums are based, in part, upon the number of claims filed, the lower the number of accidents the lower the amount of the premium. There is therefore an economic incentive to underreport.

(2) MSHA has not placed a high priority on enforcement of Part 50 (30 CFR Section 50) violations. The Agency has, in effect, relegated these to the less serious category, resulting in the application of the $20.00 penalty and minimum prosecutorial effort against underreporting violations.

It is clear that underreporting affects enforcement as well as our perception of the industry and its progress or lack thereof. Unless and until emphasis is placed upon reporting violations the Act will not accomplish its goals.

## Statistical Analysis

Despite the possibility of a flawed system, below we have examined the MSHA statistics for the last ten years.

Table 2 examines the fatality rate during the period 1978 through 1986 and the nonfatal disabling and nondisabling rates for the same period.[31]

The most marked feature of these rates are their consistency for the entire period. The 1978 rate is .05/200,000 equal to the 1986 figure. However, keeping in mind that a change of 1% in the rate represents a 20% difference, the period is characterized by wide differences during the period ranging between .04 and .08/200,000. In the 8 year period, the rate increased from one year to the next 4 times and correspondingly decreased four times. The range of difference (.04 to .08) represents a swing of 100%. The average rate for the period is .06/200,000.

If we assume approximately 333,000,000 man hours[32] per year, the average rate of .06/200,000 is equivalent to 100 fatalities annually. The difference between this average and the rate of .04 (clearly an achievable rate) represents 37 miners' lives each year or 300 in the time period under discussion. We wish to emphasize that a fatality rate of .04/200,000 should not only be the achievable minimum but should be a starting point in our measurement of what we can achieve in reducing fatalities to their minimum.

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[31]. MSHA figures did not compute a fatality rate for 1986. Based on the available figures, the 1986 rate is .05/200,000.

[32]. This figure is conservative. The man hours per year at a minimum exceed 333,000 for each year of the 8 year period. Based on the actual yearly hours worked total, the saving of lives would be slightly higher.

Coal Mining Fatalities and Injuries

This pattern of fluctuation and stagnant movement around a status quo safety record is evidenced also in a review of the fatality rates by accident classification (Table 3). The eight highest rate classifications show the increase/decrease pattern around their individual averages. For example, the "Fall of Roof" classification which has the highest fatality rate fluctuates between rates of .0096 and .0301 with a mean rate of .0171. The lack of consistency in demonstrating any kind of systematic improvement is shown by its decreases in rate over the previous year three times and increases of 5 times. This failure of improvement exists despite the much heralded REAP program which, while temporarily successful, did not systematically attack the problem of roof falls. The same pattern is evidenced in the eight relatively high rate classifications which together increased 29 times over the previous year, decreased 28 times and stayed the same seven times.

The most dangerous mining is the underground mining. Table 4 summarizes fatalities and rates found in this aspect of mining. The underground fatalities present the same status quo situation described above with year to year fluctuations around its mean of .086. The greater danger faced by the underground miner compared to the total mining labor force is shown not only by its higher mean rate (.086 compared to .06) but also by comparing the individual years.

Table 2 also presents data on non-fatal disabling injuries (NFDL) and the no days lost injuries (NDL). Greatest weight obviously attaches to NFDL. The record shows some similarities to the fatality rates - namely a tendency toward a status quo though there is some decrease in the 1983-1986 period, compared to previous years when the rate climbed. By 1986, the rate had still not reached the level of 1975's rate.

Table 4 also displays the NFDL rate for underground mining. As with fatalities, a similar pattern is evident. The rate in 1986 approximates the 1975 rate; while there is some slight improvement in later years; the overall picture is a maintenance of the status quo.

Table 5 summarizes the fatalities and NFDL for total mining and underground mining. A comparison between these two confirms the greater danger underground mining presents both in terms of the higher incidence of fatalities and injuries but also their greater resistance to movement from the status quo. In addition to these data, we include in Table 5 the fatality rates for mines with fewer than 20 miners. Their mean fatality rate for the seven years for which data are available is .156 or almost double the underground fatality rate.

## TABLE 2

### FATALITIES AND INJURIES IN MINING*

| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983** | 1984 | 1985 | 1986 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Fatalities: Coal | 155 | 141 | 139 | 106 | 144 | 133 | 153 | 122 | 70 | 125 | 67 | 87 |
| RATES | .08 | .07 | .07 | .05 | .07 | .06 | .08 | .06 | .04 | .07 | .04 | .05 |
| Fatalities: Metal-Nonmetal | 123 | 113 | 133 | 136 | 123 | 103 | 84 | 68 | 62 | 80 | 57 | 46 |
| RATES | .05 | .05 | .06 | .05 | .04 | .04 | .03 | .03 | .03 | .04 | .03 | .04 |
| NFDL: Coal | 11,107 | 14,389 | 14,989 | 14,785 | 19,012 | 18,689 | 15,485 | 14,215 | 9,545 | 10,246 | 9,073 | 8,723 |
| RATES | 3.63 | 4.45 | 4.47 | 7.63 | 8.61 | 8.61 | 7.68 | 7.13 | 5.76 | 5.72 | 5.32 | 5.22 |
| NDL: Coal | 9,641 | 12,768 | 10,067 | 5,292 | 4,478 | 3,854 | 3,138 | 3,125 | 2,514 | 2,549 | 2,560 | 2,622 |
| RATES | 5.24 | 6.66 | 5.15 | 2.74 | 2.03 | 1.78 | 1.56 | 1.57 | 1.52 | 1.42 | 1.50 | 1.57 |

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* SOURCE: MSHA Office of Public Information, 3-4-87. MSHA 1975-77 data reflected rate per 1,000,000 man hours. Those figures were corrected to reflect the current rate based on 200,000 man hours.

** Beginning with 1983, independent contractors employee data is omitted by MSHA from NFDL and NDL; however the figures shown here are adjusted to include contractors for all years.

Definitions
Fatalities: Injuries resulting in death
NFDL: Non Fatal with Days Lost; injuries are nonfatal occurrences with lost work days or days of restricted activity.
NDL: No Days Lost: nonfatal occurrences resulting only in temporary loss of consciousness or medical treatment other than first aid.

## TABLE 3
## FATALITY RATES BY ACCIDENT CLASSIFICATION: COAL MINING *
## (Per 200,000 Man Hours)

| | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 |
|---|---|---|---|---|---|---|---|---|---|
| Electrical | .0061 | .0058 | .0054 | .0058 | .0030 | .0057 | .0034 | .0042 | .0054 |
| Explosives and Breaking Agents | .0014 | .0010 | .0036 | .0026 | .0020 | ----- | .0011 | .0036 | .0018 |
| Falling/Rolling/ Sliding Material | .0009 | .0010 | .0018 | .0016 | .0025 | .0017 | .0011 | .0024 | .0024 |
| Fall of Face/Rib/ Side/Highwall | .0033 | .0034 | .0027 | .0021 | .0020 | .0029 | .0034 | .0012 | .0018 |
| Fall of Roof | .0132 | .0301 | .0140 | .0193 | .0241 | .0109 | .0174 | .0096 | .0156 |
| Powered Haulage | .0142 | .0180 | .0167 | .0188 | .0138 | .0080 | .0168 | .0113 | .0120 |
| Ignition/Explosion of Gas/Dust | ----- | ----- | .0023 | .0193 | .0039 | .0046 | .0017 | .0018 | .0006 |
| Machinery | .0033 | .0039 | .0104 | .0063 | .0069 | .0034 | .0056 | .0036 | .0042 |

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* SOURCE: MSHA Office of Public Information, 3-4-87. MSHA data showed numbers of fatalities for 16 different classifications. This chart calculates rates from the fatality figures for the eight highest fatality classifications.

## TABLE 4

## UNDERGROUND COAL MINER ACCIDENT RATE *

(This chart reviews the most dangerous aspect of mining. We have excluded office personnel, surface personnel and include only men and women actually working underground. Contractors both underground and surface are included because MSHA does not separate them out prior to 1983).

| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983** | 1984 | 1985 | 1986*** |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| FATALITIES | 99 | 104 | 91 | 67 | 106 | 94 | 112 | 83 | 45 | 98 | 45 | 29 |
| RATE (200,000 HRS) | .09 | .10 | .09 | .07 | .09 | .08 | .11 | .08 | .06 | .12 | .06 | .08 |
| NFDL | 8,170 | 10,658 | 10,991 | 10,534 | 14,184 | 14,004 | 11,348 | 10,467 | 6,692 | 7,227 | 6,259 | 2,931 |
| RATE (200,000 HRS) | 7.8 | 9.8 | 10.7 | 10.9 | 12.3 | 12.7 | 11.3 | 10.3 | 8.6 | 8.6 | 7.7 | 7.6 |

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* SOURCE: MSHA Information and Annual Reports.

** From 1983 to 1986, both underground and contractors reported separately by MSHA. These data adjusted to include both to be consistent with previous years.

*** 1986 data covers to June 1986 (1/2 year).

## TABLE 5

## COMPARISON TOTAL COAL TO UNDERGROUND COAL * FATALITY AND NFDL RATES

| | 1975 | 1976 | 1977 | 1978 | 1979 | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Fatalities: TOTAL COAL | .08 | .07 | .07 | .05 | .07 | .06 | .08 | .06 | .04 | .07 | .04 | .05 |
| Fatalities UNDERGROUND | .09 | .10 | .09 | .07 | .09 | .08 | .11 | .08 | .06 | .12 | .06 | .08 |
| NFDL: TOTAL COAL | 3.63 | 4.45 | 4.47 | 7.63 | 8.61 | 8.61 | 7.68 | 7.13 | 5.76 | 5.72 | 5.32 | 5.22 |
| NFDL: UNDERGROUND | 7.8 | 9.8 | 10.7 | 10.9 | 12.3 | 12.7 | 11.3 | 10.3 | 8.6 | 8.6 | 7.7 | 7.6 |
| Fatalities: Mines with Fewer than 20 Miners.** | | | | | | .12 | .17 | .19 | .07 | .13 | .22 | .19 |

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* This Table combines rates shown in Tables 1 and 3 for comparison purposes.

** SOURCE: MSHA Office of Public Information, 3-4-87. Data provided for fatalities; we calculated rates.

## 6. Approval and Certification

### Introduction

The ACC division of the MSHA is and has been rife with problems and shortcomings. Serious accusations have been made that this division has not carried out its mandate of making certain that equipment introduced in the mines is safe. During the last five years, information regarding the division's failure has been submitted to the Assistant Secretary, the director of the Office of Inspector General, the Secretary of Labor and appropriate Congressional committees.

The Department, however, has proposed regulations which would essentially eliminate the Agency's role in equipment approval and certification; thus providing less protection to the miners rather than more; nor does this proposal solve the problems which exist in the mines today. This self-certification proposal presently being promulgated by MSHA would have the effect of having manufacturers certify their own equipment for use undergound.

In early 1982, we received through the mail an unsolicited memo, dealing with MSHA's approval and certification procedures, which made serious allegations with regard to the conduct of the program generally vis-a-vis manufacturers of mining equipment.

Because of the serious but anonymous nature of these allegations, and because the Office of Inspector General, Office of Audit had in 1981[33] completed an investigation of this division and made certain findings parallel in nature to the allegations in the memo (though, the earlier findings were less serious in nature), we hand-carried a copy of the memo to the Inspector General of the Department of Labor shortly after receipt.

Subsequent to our submission, a disaster occurred at the Redstone Mine, Colorado, killing 15 miners. A number of miners attributed the cause of that disaster, in part, to items related to the allegations made in the unsolicited memo; we also conveyed this information to the Office of the Inspector General. During the time the investigation was being conducted, and after the investigation was common knowledge within MSHA, the Agency promulgated a proposed modification of the machinery approval and certification program (30 C.F.R. Sec. 37), the very program under scrutiny (48 Fed. Reg. 9475, March 4, 1983). These proposed modifications did not take into account the results of the findings of the Inspector General.

The Inspector General's investigative report unequivocably verified two of the allegations. First, that "most of the brattice cloth used for ventilation control in coal mines will fail the flame spread-index tests required by law, i.e., they are too highly flammable." Second, that "many hydraulic fluids in common usage are not as flame resistant as required by law."

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[33]. Time For a Change in Approving Mine Equipment, Mine Safety and Health Administration, Office of Inspector General, National Office, Division of Program and Internal Audits, Report Number 81-3, dated October 20, 1981.

The Inspector General also found a lack of "uniformity in the positions, colors or integrity of the electrical conductors in approved coal mine electrical cables" and a lack of "continuity in the size of insulating coverings affecting the safety of cable splices and switch gear and power center exit/entries." However, the report noted that MSHA does not have a regulatory basis for controlling this problem. Voluntary industry standards are supposed to govern this area.

Three things became clear upon reading this report. First, the rules as they now stand are frequently unclear and hence ineffective.[34] Yet, no adequate corrective action on the regulations has been taken to date.

Second, MSHA's proposal to give manufacturers of mining equipment the responsibility for the testing of their own products will only make matters worse. MSHA, as a neutral federal agency, should retain responsibility for the testing of mining equipment.

Third, until permanent corrections of these hazards can be implemented, miners must be alerted to these problems. All possible steps to prevent accidents from the hazards identified in the report must be taken.

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[34]. The Inspector General noted this problem almost two years prior in a report issued October 20, 1981. At that time, the Inspector General stated:

> "CFR 30, Parts 1-36, which govern mining productgs approval are an archaic patchwork of inconsistent, outdated and unclear directions to MSHA and manufacturing personnel."

As of today, the Agency still relies primarily on an informal system of contacts between inspectors and ACC. The Agency has not proposed regulations for color coding electrical cables; and the flammability of the brattice cloth remains a question (the Agency relies on a legal interpretation but does not deny the flammability problem).

7. Omissions:

The Mine Safety Act gave MSHA responsibility for a number of areas where no regulations exist. At the time of passage and amendment in 1969 and 1977, Congress contemplated that the Agency would investigate problems, develop regulations and provide justifications for such regulations over time. The attached is a list of areas where the Agency has that responsibility and authority but has failed to act.

| 1969 Act | Provisions of the Act Not Promulgated |
|---|---|
| Section 101(i) | promulgated regulations for mine construction on the surface |
| Section 101(b) | promulgation of regulations reducing the protection of miners by existing regulations |
| Section 101(a)(4)(c) | regulations not promulgated |

| | |
|---|---|
| | proposed surface regulations - part 77 revision in 1977-78 |
| Section 101c | findings of the Secretary shall be made public - not in 1977 Amendments |
| Section 103(a) | mines that are active and not producing coal are not receiving four inspections per year |
| Section 104(3)(1) | Pattern of violations |
| Section 110(b) | $1000.00/day civil penalty |
| Section 301(a) | the use of improved underground equipment and other source of power for such equipment |
| Section 303(d)(1) | preshift examinations - other areas designated by the Secretary |
| Section 303(m) | Interpretation placed on "idle and abandoned areas" |
| Section 303(g)(2) | Ventilation on sealing of gob areas in mines opened prior to March 30, 1970 |
| Section 303(g)(3) | Ventilation or sealing of job areas in mines opened after the effective date of the Act and new job in existing mines |
| Section 31J(c) | Ventilation of certain structures to the return |
| Section 313(c) | Use of explosives and detonators in anthracite mines |
| Section 315 | Emergency shelters |
| Section 317(f)(4) | Reportedly some trolley haulage systems and belt conveyors in District 8 are not separated |
| Section 317(o) | Atmospheres that are deficient in oxygen |
| Section 317(q) | Devices to suppress ignitions. These were perfected by Pittsburgh Technical Support |

| | |
|---|---|
| Section 318(a) | Certification/register |
| Section 318(i) | Approval of equipment to prevent accidents other than fires and explosions |

A National Mining Safety Board

In our discussion on accountability, we reviewed MSHA's apparent inability to resolve the conflict between its regulatory enforcement function with its responsibility for accident investigation and control. This conflict is long standing as is the Agency's inability to resolve the problem. It is our position that, given this inherent conflict, a resolution outside of the Department may well be appropriate. The question of the self review has been raised in another context and a similar issue is set out in the legislation establishing the National Transportation Safety Board, 49 U.S.C. 1901:

> Proper conduct of the responsibilities assigned to this Board requires vigorous investigation of accidents regulated by other agencies of govenment; demands continual review, appraisal, and assessment of the operating practices and regulations of all such agencies; and calls for the making of conclusions and recommendations that may be critical of or adverse to any such agency or its officials. No Federal agency can properly perform such functions unless it is totally separate and independent from any other department, bureau, commission, or agency of the United States.[35]

We would suggest that several functions would be obvious for such a board and would include:

Investigation of accidents and accident causes.

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[35]. Pub. L. 93, 633, Title III, Section 302, Jan. 3, 1975, 88 Stat. 2166.

Conduct special investigations concerning criminal liability.

Determinations of individual and company responsibility including the possibility of miner fault, supervisory fault, unsafe conditions, etc.

Determination of the adequacy and effectiveness of MSHA regulations and enforcement activity related to immediate causes of the accident and/or overall mine conditions.

Research and prevention activity vis-a-vis mine safety including the review of MSHA standards and enforcement activities.

Reporting to the President and, concurrently, to Congress and MSHA. MSHA would be expected to reply to the reports within a specified time period, the reply to be evaluated by the National Mining Safety Board and accepted or rejected.

Compilation and analysis of accident statistics (Part 50).

Obviously the establishment of an independent agency requires much more consideration both from a conceptual and functional standpoint. Therefore, we strongly urge that the Committee begin the process leading to establishment of a National Mining Safety Board.

Martin Berdit, Staff Officer, and Judith Roberts, Production Director, assisted in the preparation of this testimony.

The CHAIRMAN. If it is all right, Senator Simon, we will hear the whole panel.

Senator SIMON. Okay.

The CHAIRMAN. Mr. Potter. I welcome you here, and we look forward to your testimony.

Mr. POTTER. Thank you.

The CHAIRMAN. You retired from the agency the first of the year, is that correct?

Mr. POTTER. Yes, sir, it is.

The CHAIRMAN. And how long were you employed by MSHA?

Mr. POTTER. I went to work as an inspector in southern West Virginia in 1959, so about 28 years.

The CHAIRMAN. And what are your professional qualifications?

Mr. POTTER. I went to work in the mines as a laborer in June of 1946; then I was in mine management. I joined the Bureau of Mines in 1959. In 1969, I was assigned to the director's staff and worked on the 1969 Act with both the House and the Senate committees. In 1971, I was promoted to chief, Division of Safety, a position I held until March of 1986.

The CHAIRMAN. And, Mr. Componation, I understand you also retired from the agency recently.

Mr. COMPONATION. I retired in January 1984.

The CHAIRMAN. And how long were you with the agency?

Mr. COMPONATION. I was employed by the agency on July 11, 1960.

The CHAIRMAN. And what are your professional qualifications?

Mr. COMPONATION. I worked approximately 43 years around the mine, including my term with the agency.

The CHAIRMAN. Bring your microphone a little closer.

Mr. COMPONATION. I have approximately 43 years in the mining industry. I have served in the capacity from a hand-loader to a superintendent of coal mines. I have been with the agency since 1960. I started as an inspector, and I have worked approximately 18 years in technical aspects such as ventilation and roof control. I was the supervisor of the Roof Control and Ventilation Sections in a district office until 1976, at which time I was transferred to the Arlington office. And I served as the ventilation specialist in the Arlington office until my retirement.

The CHAIRMAN. All right. Now, Mr. Potter and Mr. Componation, at a hearing of the committee last September, there was testimony about safety regulations. The former Assistant Secretary Ford B. Ford testified that early in 1983 he had set up a committee consisting of agency experts to rewrite and upgrade safety regulations. He said the committee completed this task, and he thought they had done a good job.

Assistant Secretary Zegeer then testified that he had directed that the new proposed regulations be rewritten, and we compared the proposed new electrical regulations which had been prepared by Cecil Lester with the latest rewrites, and we also compared the rewrites with the recommendations of the industry. It seemed quite clear that the rewrites represented a watering down of the proposed regulations that had been submitted by the agency's own experts.

Since that hearing we obtained the 1983 new proposals of the agency experts for regulations concerning ventilation, roof control and explosives.

Now, Mr. Potter, were you in charge of that program to upgrade the regulations?

Mr. POTTER. Yes, sir, I was.

The CHAIRMAN. So you did the basic work for the agency?

Mr. POTTER. I supervised about 15 committees that did the basic work.

The CHAIRMAN. And they made a series of recommendations for the safety regulations, is that correct?

Mr. POTTER. Each committee conducted a review and developed a rewrite of the existing regulations and submitted those within time frames that were agreed on. Yes, sir.

The CHAIRMAN. And you were instructed to upgrade the regulations to provide the maximum safety for the miners?

Mr. POTTER. That is correct.

The CHAIRMAN. And were your committees formed with the best experts the agency had?

Mr. POTTER. Yes, sir.

The CHAIRMAN. And did they complete their assignments and turn them in?

Mr. POTTER. Yes, sir, within the agreed time frame.

The CHAIRMAN. And had they done a good job of upgrading the standards?

Mr. POTTER. I thought so, and we submitted those rewrites to the administrator's office. There was an ad hoc committee of district managers, subdistrict managers, an inspector, myself and the chairman of the committee that reviewed those regulations before they were forwarded to the sixth floor, which is the assistant secretary's office. The administrator participated in that review at that time.

The CHAIRMAN. Was that Mr. Ken Katen?

Mr. POTTER. Not at this point. The administrator participated in that meeting at times. There were very few changes made in the regulations before they were forwarded to the sixth floor for a review.

The CHAIRMAN. Now, after the upgrading had been completed, did Mr. Ken Katen attend a meeting of the ventilation committee? We have got a series of the different recommendations and we will come to the ventilation committee recommendations in just a moment. But did Mr. Ken Katen attend the meeting?

Mr. POTTER. After the regulations were sent to the sixth floor and to the solicitor's office and the Office of Standards, there started a series of meetings with the committee chairman and one or two people from the committee to work with the attorneys, primarily, to put those regulations in language that would be acceptable for publication in the Federal Register.

There was a meeting of the ventilation committee shortly after Mr. Katen went to work for Mr. Zegeer, and Mr. Zegeer and Mr. Katen did attend a meeting of the ventilation committee.

The CHAIRMAN. And he stayed at the meeting; is that correct? After you left the meeting, he remained behind?

Mr. POTTER. Yes. I attended the meeting while the assistant secretary was there. We had a discussion on bleeders, and then when Mr. Zegeer left, I left. Mr. Katen stayed with the committee.

The CHAIRMAN. Well, what were you told that Mr. Katen said at that meeting?

Mr. POTTER. Later in the evening, I guess near quitting time, probably around 4:30, the chairman of the committee, Robert Elam, who worked for me in the Division of Safety as a mining engineer, come down to my office, and Bob was somewhat upset. He asked me if he had to do what Mr. Katen told him to do, and I asked him what had Katen told him to do. It had to do with not requiring bleeders and about the ventilation and sealing of gob areas.

I told Bob he did not have to do anything that Mr. Katen told him to do, that he has his instructions from the coal group, and he was to carry those out; and if there were any changes made, they could be made on the sixth floor when they were received by the assistant secretary's office.

He told me that Mr. Katen said—and Mr. Katen had just come to work in the agency—that he was there with an agenda from the Kentucky operators for changes in the regulations that he was going to see happening.

The CHAIRMAN. Well, were your people upset with this?

Mr. POTTER. Yes, sir. They were very upset. The next morning, I talked to the attorney who had a responsibility for regulations for coal and asked if he had been told anything that occurred in the meeting the previous afternoon. The attorney assigned to the case had told him also about this conversation.

The CHAIRMAN. Now, did Assistant Secretary Zegeer subsequently announce that Mr. Katen spoke for him on safety regulations?

Mr. POTTER. That is my understanding that he made that announcement.

The CHAIRMAN. What year was that?

Mr. POTTER. Senator Kennedy, I really do not know.

The CHAIRMAN. Well, now, did Mr. Katen then preside over the watering down process to weaken the regulation proposals your committee made?

Mr. POTTER. It is my understanding from reports of committee chairmen who still worked in the division that they received regulations back with pencil notes that they said was Mr. Katen's writing where he disagreed with many of the provisions that had been rewritten.

The CHAIRMAN. And is it your belief, reviewing the proposed regulations and the proposed rewrites, that those rewrites weakened the work of the professional committee?

Mr. POTTER. It is my opinion of the ones that I have reviewed that many of the provisions provide less safety than the experts recommended.

The CHAIRMAN. Now, the staff has prepared four charts covering some of the major areas of the safety regulations. One is "Roof Control," "Ventilation," "Explosives," and "Electrical." These charts compare side-by-side the recommendations of the safety experts, the comments submitted by the American Mining Congress—these are the industry recommendations—and the Bituminous Coal Operators Association to MSHA and the MSHA safety regulations in their most up-to-date form. Those are the regulations over here in their up-to-date form.

Could you, Mr. Potter, guide us through some examples of the rewriting of the roof control regulations from the charts, and perhaps we will examine the explosives and electrical regulations?

Let us begin with the regulation on the coal and rock outbursts Why isthat an important issue to be addressed, just briefly?

Mr. POTTER. Senator, very few mines in this country suffer from outbursts of coal and rock, but those that do, it is a serious problem. There has been explosions of methane attributed to an outburst of rock and coal, and there has been men killed in the outburst itself from the coal that exploded from the pressure.

In those mines that suffer from this problem, the need to plot those on a mine map to try to get a fix on areas that may probably have an outburst is very important. Once they have a base line, then precautions can be taken to prevent, or else lessen, the severity of the outcome of an outburst of rock and coal.

The CHAIRMAN. So that is an important safety proposal for the miners, is that correct?

Mr. POTTER. In my opinion, it is, yes, sir.

The CHAIRMAN. And MSHA, according to this chart here, based upon the reports that I just mentioned, has basically ignored your advice and instead sided with the industry. The industry indicated no provisions for coal and rock outbursts and the MSHA regulation has no provision.

I understand that between 1980 and 1986 there have been five fatalities that occurred as a result of the coal and rock outbursts. Does that sound about right to you?

Mr. POTTER. Well, I think in April of 1981 there was an explosion of methane at the Mid-Continent Mines in Colorado, and that was an outburst that pushed high levels of methane out into the working face where there was an explosion and 15 men lost their lives.

The CHAIRMAN. Now, let us go to the regulation concerning ATRS systems. Your recommendation requires an ATRS system in all mines. Could you tell us just very briefly why that is important?

Mr. POTTER. According to research work done by the Bureau of Mines, which has responsibility for conducting research in mines for the agency, the equipment in all coalbed heights can be equipped with a TRS system.

Senator SIMON. What is a TRS system?

Mr. POTTER. It is a temporary roof control system that can be installed under permanent roof supports without anyone going inby it. It is not an automated system, although that is a misnomer but it is used in the industry.

I see that the industry has said 48 inches, and MSHA has said 42 inches.

The CHAIRMAN. What is the significance of these changes? As I understand it, this is an extremely important safety area. Is that right?

Mr. POTTER. I think the committee on roof control was guided by the problems that we had with cabs and canopies on electric face equipment, where cut-off heights of 42 inches was given. There are many pieces of equipment in the country today that do not have cabs and canopies after some 12 or 13 years of that regulation being in effect.

It is kind of an escape valve, and I believe, to require it in all mines, the experts are correct; and in those mines that cannot, there is a provision in the 1969 Act, which was carried forward in the 1977 amendments, that the operator can petition the agency for modification of that standard as long as what he proposes to do provides the same degree of safety as the existing regulation.

The CHAIRMAN. So by going down to just 42 inches or more, you are leaving out a lot of the mines that, as I understand it, pose safety problems. Am I correct in that?

Mr. POTTER. That is correct, sir.

The CHAIRMAN. And is there any way that you could indicate to us the number of deaths that might have been prevented?

Mr. POTTER. Well, you can almost say that every miner killed inby permanent roof supports in the face areas of coal mines, that death could have been prevented with a TRS system.

The CHAIRMAN. Now, as I understand it, between 1980 and 1986, 74 fatalities occurred because of roof falls, and records on 30 of these fatalities indicate the ATRS system could have prevented the deaths. Does that sound about right to you?

Mr. POTTER. It sounds about right to me, sir.

The CHAIRMAN. Now, we will continue with the explosive regulations. We will look at those which are of the greatest importance, rather than examining each one on the charts.

At the top, we have the regulation for shooting off the solid. Your expert recommendation "forbids shooting off the solid without the approval of District Manager whose decision must be based on the specific conditions of the mine." The industry recommendation "permits shooting off of the solid." MSHA's regulation "permits shooting off the solid."

Why is this important in terms of safety provisions?

Mr. POTTER. In eastern Kentucky, I think it was in 1980, 1981, we had several instances where men were killed shooting off the solid. It is not the safest way to prepare coal for loading.

The CHAIRMAN. Could you just tell us very briefly what shooting off the solid is?

Mr. POTTER. In most conventional mining, the coal is under-cut or top-cut or side-cut to provide a second face on the coal. So when you put off your explosive charge, it will have a place for relief. It is pretty much like the wall when you cut a kerf underneath it six or eight feet deep.

On solid shooting, you are shooting just like that solid wall with holes placed in a configuration that will pull the coal or will blast the coal down for loading.

If you do not put those holes on a certain pattern, if you have too much of a burden, if the holes are too far apart, you have a possibility of having a blown-out shot; that is, a shot comes out the drill hole.

That is what happened down in Kentucky. It is not a safe way of breaking coal for loading. It should be under-cut. However, it is one of the methods that is used, and I believe as long as we are going to permit the use of solid shooting that we should have some control over it.

The CHAIRMAN. So MSHA by siding with the industry on this provision has not protected the miners from a life-threatening hazard.

Now, I would like to read an excerpt from an MSHA multiple fatality investigation report which illustrates the danger of firing more than one face at a time. It says, "On Monday, December 7, 1981, at approximately 2:50 p.m., a coal dust explosion occurred on the south main working section at No. 11 mine at Atkins Coal Company. The accident resulted in the death of all eight miners who were underground at the time. The accident occurred while the face and right cross-cut were being blasted simultaneously."

[Information supplied for the record follows:]

| FATAL | EXPERTS PROPOSAL | ADMINISTRATIONS PROPOSAL |
|---|---|---|
| Since 1983<br>28 fatals as a<br>result of blast-<br>ing accidents<br>(statistics attached) | (i) Face & Firing Procedures<br>(a) Not more than one face in a working place shall be fired at one time.<br>NOTE: In proposing to allow up to three faces to be blasted at once, the administration has legalize the firing of 60 holes or 180 pounds of explosives simultaneously. This is a very dangerous practice that would violate the permissibility of explosives. Shooting three faces at once would release surplus heat and excessive toxic fumes and greatly increase the possibility of igniting an explosion. The Adkins Coal Company's No. 11 Mine disaster is a prime example of this. | (i) Face Firing Procedures<br>(b) Only one face in a working place shall be blasted at a time, except that up to three faces in a working place may be blasted at a time if each face has a separate exit and no more than 20 shots are fired in the round. |

## ABSTRACT

This report is the result of an investigation by the Mine Safety and Health Administration (MSHA) made pursuant to section 103(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act), Public Law 91-173, as amended by Public Law 95-164, 30 U.S.C. 813(a) (Supp. IV, 1980).

On Monday, December 7, 1981, at approximately 2:50 p.m., a coal dust explosion occurred on the south main working section at the **No. 11 mine**, **Adkins Coal Company**, located at Kite, Knott County, Kentucky. The accident resulted in the **death of all** [redacted]**) miners** who were underground at the time. The names, ages, occupations and mining experiences of the victims are contained in Appendix A.

The accident occurred while the **face and right crosscut were being blasted simultaneously** from the solid in the No. 1 entry of the active working section. The investigation revealed that a train of explosives, at least 74 inches in length, in the second hole from the right rib of the No. 1 entry face, failed to detonate. This failure provided too much burden for the rib hole to pull, causing the rib hole to blow out, igniting the coal dust which was in suspension from the blast of the other holes and the dust in suspension which had been previously deposited on the floor, roof and ribs from earlier mining operations. Evidence indicated that it was a practice not to use stemming in the blast holes and that each hole was loaded to or near the hole collar with explosives.

| | | |
|---|---|---|
| 85-41 | EXPLOSIVES | 8/21/85 |
| - | Barbourville | Jellico, TN |
| Carl Boone II | Roger Dingess | Date 8/15/85 Time 6:00 p.m. |
| State Police | | Telephone Number (606) 878-7000 |
| F & F Coal Company | | |
| No. 2 Mine | 15-13127 | Coal |
| 15. Number of Employees 5 | 4 | e. Other 1 |
| 16. a. Number of Persons in Mine at Time of Accident 4 | | 0 |
| 17. Mine Location a. City Woodbine | b. County Whitley | c. State Kentucky |
| 18. Date of Accident (month, day, year) 8/15/85 | 19. Time of Accident (indicate a.m. or p.m.) Approx. 4:00 p.m. | 20. Date/Time of Death (month, day, year) SAME |

☒ 01

☐ Other (specify)

| | | |
|---|---|---|
| | 3 | a. Name Reid McKiddy |
| 21 | -0750 | Owner/Foreman |
| | | e. Job Title When Injured SAME |
| 24. Mining Experience a. Total 3 yrs. | b. With Company 3 yrs. | c. At Mine 2 mos. |
| | | d. On Job Unknown |

25. Autopsy ☒ Yes ☐ No

a. Place Lexington, Kentucky

26. Status of rescue and recovery operations (attach separate sheet if necessary)

COMPLETE

27. Description of Accident (include equipment involved and exact location in mine of fatality) (continue on reverse if more space needed)

The victims were working in the unventilated face areas. They were overcome by the fumes from the blasting of three cuts of coal in this area. They died of carbon monoxide poisoning.

8/21/85

Carl Boone II

Subdistrict Manager

8/21/85

MSHA Form 7000-13 July 85

[illegible] Mine Name and [illegible]

[illegible] Protected by the Privacy Act of 1974

1. Fatal Case Number
40

2. Name of Victim
Robert L. Bauer

3. Age
21

4. Social Security Number (last 4 digits only)
-8663

5. Regular Job Title
Drill Helper

6. Job Title when Injured, if Different
SAME

| 7. Mining Experience a. Total | b. With Company | c. At Mine | d. On Job |
|---|---|---|---|
| 2 mos. | 2 mos. | 2 mos. | 2 mos. |

1. Fatal Case Number
41

2. Name of Victim
Randy Powers

3. Age
18

4. Social Security Number (last 4 digits only)
-7298

5. Regular Job Title
UNKNOWN

6. Job Title when Injured, if Different
SAME

| 7. Mining Experience a. Total | b. With Company | c. At Mine | d. On Job |
|---|---|---|---|
| 2 mos. | 2 mos. | 2 mos. | 2 mos. |

1. Fatal Case Number

2. Name of Victim

3. Age

4. Social Security Number (last 4 digits only)

5. Regular Job Title

6. Job Title when Injured, if Different

| 7. Mining Experience a. Total | b. With Company | c. At Mine | d. On Job |
|---|---|---|---|
| | | | |

1. Fatal Case Number

2. Name of Victim

3. Age

4. Social Security Number (last 4 digits only)

5. Regular Job Title

6. Job Title when Injured, if Different

| 7. Mining Experience a. Total | b. With Company | c. At Mine | d. On Job |
|---|---|---|---|
| | | | |

Remarks

| Signature | Title | Date |
|---|---|---|
| Carl E. Boone II | Subdistrict Manager | 8/21/85 |

The CHAIRMAN. How about the electrical regulations, Mr. Potter? Regarding examinations and testing of electrical equipment, you recommended that hazardous electrical equipment be corrected or removed immediately. Is that correct?

The experts' recommendation "Requires that hazardous electrical circuits and equipment discovered during examinations be corrected or removed immediately." The industry recommendation, "Permits hazardous equipment to be used during a shift." MSHA's regulation "Permits hazardous equipment to be used during a shift."

Why is this recommendation important in terms of safety?

Mr. POTTER. If you go with the industry and MSHA's recommendation, a piece of equipment with no brakes on it could be used from the time it is discovered, if it is the beginning of the shift, for the next eight hours. That would hold true for anything that you would find with a piece of equipment. A ground on the frame could be used until the end of the shift.

Those two provisions, the recommendations of the industry and the MSHA regulations, just blow my mind. I just cannot understand why we would even think about anything like that. I would say that there are safety directors in the mining industry that would probably shudder if something like that happened.

The CHAIRMAN. Why? Because it is so obvious, you mean?

Mr. POTTER. It is so obvious.

The CHAIRMAN. Do you agree with that, Mr. Componation?

Mr. COMPONATION. Yes.

The CHAIRMAN. Yet there is a report here—and I will include the whole report in as part of the record—an investigative report by MSHA which demonstrates what can happen if hazardous equipment is not corrected or removed before a shift.

I am quoting the report now. "A fatal haulage accident occurred at the loading point of the north main section on July 22, 1986, when the tram controls of a shuttle car being operated by Dennis Powroznik stuck in the closed position, causing the shuttle car to go out of control. The victim's head, positioned outside the canopy, was squeezed between the coal rib and the canopy support. The accident occurred because the shuttle car is not maintained in a safe operating condition. The accident could have been prevented if the shuttle car had been maintained in a safe operating condition."

[Information supplied for the record follows:]

Fatal Accident    Mine Safety and Health Administration

This form is affected by the Privacy Act of 1974

| | | |
|---|---|---|
| 1. Fatal Case Number 63 | 2. Accident Classification HAULAGE | 3. Today's Date 07/22/86 |
| 4. District 3 | 5. Subdistrict Morgantown | 6. Field Office Clarksburg |
| 7. Name of Person Preparing Report Paul H. Moore | 8. MSHA Person Notified James D. Satterfield | Date Time 07/22/86: 2:00 p.m. |
| 9. Notifying Mine Person Dave Summers (Mine Clerk) | | 10. Telephone Number 304/457-3378 |
| 11a. Company/Contractor Name C & W Coal Company, Inc. | 11b. Parent Company | |
| 12. Mine Name Redstone No. 6 | 13. ID Number 46-06241 | 14. Primary Mineral Mined Coal |
| 15. Number of Employees a. Total 16 | b. Underground 14 | c. Open Pit or Quarry d. Mill e. Other |
| 16. a. Number of Persons in Mine at Time of Accident 14 | b. Number of Persons Unaccounted for 0 | |
| 17. Mine Location a. City Philippi | b. County Barbour | c. State West Virginia |
| 18. Date of Accident (month, day, year) 07/22/86 | 19. Time of Accident (indicate a.m. or p.m.) 1:20 p.m. | 20. Date/Time of Death (month, day, year) 07/22/86; 1:20 p.m. |

21. Code which best describes where accident occurred

☒ 01—Underground
☐ 02—Surface at Underground
☐ 03—Open Pit Mine
☐ 06—Dredge Mining
☐ 30—Mill
☐ 99—Office Facilities
☐ Other (specify)

| | | | |
|---|---|---|---|
| 22. Number of Nonfatal Injuries 0 | 23. Number of fatal injuries 1 | | a. Name Dennis Powroznik |
| b. Age 44 | c. SSN -1601 | None | e. Job Title When Injured Shuttle Car Operator |
| 24. Mining Experience a. Total 14 yrs. | b. With Company 9 mos. | c. At Mine 9 mos. | d. On Job 9 mos. |
| 25. Autopsy ☐ Yes ☐ No | a. Place Unknown | | |

26. Status of rescue and recovery operations (Attach additional sheet if necessary)

COMPLETE

27. Description of Accident (include equipment involved and exact location in mine of fatality) (continue on reverse if more space needed)

A fatal haulage accident occurred at the loading point of the north main section on July 22, 1986, when the tram controls of a shuttle car being operated by Dennis Powroznik (victim), stuck in the closed position, causing the shuttle car to go out of control. The victim's head, positioned outside the canopy, was squeezed between the coal rib and canopy support.

The accident occurred because the shuttle car was not maintained in a safe operating condition.

The accident could have been prevented if the shuttle car had been maintaine in a safe operating condition.

George M. Fesak

28. Signature Ronald L. Keaton    Title District Manager    Date 07/22/86 07/22/86

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The CHAIRMAN. Now, Mr. Componation, you were one of the key people assigned in 1983 to upgrade the ventilation regulations, were you not?

Mr. COMPONATION. Yes. I chaired a committee, a rewrite committee on the regulations.

The CHAIRMAN. Now, were you and your committee told, as Mr. Ford indicated, to draft new proposed regulations, to upgrade the old regulations?

Mr. COMPONATION. That is correct.

The CHAIRMAN. And did you do that?

Mr. COMPONATION. Yes, we did.

The CHAIRMAN. And did you complete the assignment and submit your proposals?

Mr. COMPONATION. Yes.

The CHAIRMAN. And have you reviewed some of those rewrites of your proposals?

Mr. COMPONATION. I have reviewed some of them, yes.

The CHAIRMAN. And do they provide less safety?

Mr. COMPONATION. I believe they do.

The CHAIRMAN. Well, let us look at two of the examples from the chart behind me. Can you explain what a bleeder system is and why you recommended that bleeder systems be present in all of these? We have got the whole series of regulations, which we will make available as part of the record, but right now we will take some of the more important safety regulations and examine some of those.

Let us take the regulation for bleeder systems: "Requires bleeder systems in every coal mine and recommends improvements in ventilation and evaluation of bleeder systems." The industry recommends, "Coal operator should evaluate the need for bleeder systems." And MSHA, "No bleeder systems in mines with less than .25 percent methane."

[Information supplied for the record follows:]

## ELECTRICAL

| ISSUE | EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|---|
| PANIC BARS | Requires panic bars which deenergize and activate emergency brakes on all self-propelled equipment. | No provision for panic bars. | No provision for panic bar activating brakes. Also exempts equipment with cabs from need for panic bars. |
| EXAMINATIONS AND TESTING | Requires that hazardous electrical circuits and equipment discovered during examinations be corrected or removed immediately. | Permits hazardous equipment to be used during a shift. | Permits hazardous equipment to be used during a shift. |
| GLOVES WHILE TROUBLESHOOTING AND TESTING | Requires that persons performing troubleshooting and testing wear gloves rated to the voltage of the circuit. | No provision. | No provision. |
| DISCONNECTING DEVICES | Prevents miners from inadvertently reenergizing circuits under repair by requiring that electricians keep the keys to disconnecting devices on their persons and tag the devices with their names. | No provision to protect against inadvertent re-energizing. | No provision to protect against inadvertent re-energizing. |
| ARCING ON TROLLEY WIRES | Requires devices on trolley wires to deenergize circuits when an arcing short circuit occurs. | No provision. | No provision. |

## EXPLOSIVES

| ISSUE | EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|---|
| APPROVED BLASTING UNITS | Forbids impermissible blasting units from firing shots at the working face. | Permits impermissible blasting units. | Permits impermissible blasting units. |
| SHOOTING OFF THE SOLID | Forbids shooting off the solid without approval of District Manager whose decision must be based on the specific conditions of the mine. | Permits shooting off the solid. | Permits shooting off the solid. |
| FIRING PROCEDURES | Forbids firing more than one face in a working place at one time. | Permits firing more than one face in some situations. | Permits firing more than one face in some situations. |
| MULTIPLE BLASTING | Restricts the number of holes for firing a round in the coal face. | No restrictions. | No restrictions. |
| GALVANOMETERS | Requires continuity tests of blasting circuits by blasting galvanometers to prevent attempts to fire rounds which have broken or unwired connections in the round. | Does not require continuity testing. | Does not require continuity testing. |

## ROOF CONTROL

| ISSUE | EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|---|
| COAL AND ROCK OUTBURSTS | Requires protecting miners from coal and rock outbursts and recommends plotting coal and rock outbursts at each mine. | No provision. | No provision. |
| PILLAR RECOVERY | Expands pillar recovery requirements to minimize coal and rock outbursts. | Expands pillar recovery requirements. | No expanded provisions. |
| ATRS SYSTEMS | Requires ATRS systems in all mines. | Requires ATRS systems when mining height is 48 inches or more. | Requires ATRS systems when mining height is 42 inches or more. |
| REVIEW OF ROOF CONTROL PLAN | Requires mandatory six-month revision of roof control plan by operator and review of accident and injury experience at mine. | Revisions to roof control plan left to operator's discretion. | Revisions to roof control plan left to operator's discretion. |
| TORQUE WRENCHES | Requires torque wrenches on all roof bolting machines to insure that the security of overhead bolts will be checked. | Requires torque wrenches in working section. | Requires torque wrenches in working secton. |

# VENTILATION

| ISSUE | EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|---|
| BLEEDER SYSTEMS | Requires bleeder systems in every coal mine and recommends improvements in ventilation and evaluation of bleeder systems. | Coal operator should evaluate the need for bleeder systems. | No bleeder systems in mines with less than .25 percent methane. |
| PRE-SHIFT INSPECTIONS | Requires pre-shift examinations of idle areas in mines. | No provision. | No provision. |
| 20 MINUTE METHANE TESTS | Requires conducting methane tests every 20 minutes at working face. | No provision. | No provision. |
| LINE BRATTICES | Requires installation of line brattices at distance no greater than 10 feet from the coal face. | Eliminates requirement to keep the line brattice within 10 feet of the face. | Eliminates requirement to keep the line brattice within 10 feet of the face. |
| SURFACE MINE FANS | Requires inspection of the monitoring systems on surface mine fans at least every 7 days. | Requires inspection at least once every 30 days. | Requires inspection at least once every 30 days. |
| BOREHOLES | Requires drilling boreholes when mining within 30 feet beneath another mine and requires strict testing when mining near abandoned areas. | No provisions. | No provisions. |
| VENTILATING GOB AREAS | Requires sealing of gob areas where ventilation conditions cannot be determined. | Leaves option of sealing or ventilating gob areas. | Leaves option of sealing or venitaling gob areas. |
| ACTIONS FOR EXCESSIVE METHANE LEVELS | Requires ventilation in return airways to be adjusted when methane levels reach 1.0% | Ventilation adjusted at 1.0% | Increases permissible levels of methane in return airways to 1.5% |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| Sec. 75.1001-1* CIRCUIT BREAKERS; REQUIREMENTS. | § 75.1006 Circuit breakers | § 75.1006 Circuit breakers. |
| (a)(1) RADIAL STUB-FEED TROLLEY SYSTEMS SHALL BE PROTECTED BY: | (a) No comment. | (a) Direct-current circuit breakers shall have interrupting capacities that adequately protect against undervoltage, short circuits, overcurrents and ground faults. |
| (i) A DIRECT-CURRENT CIRCUIT BREAKER CONNECTED IN SERIES WITH THE UNGROUNDED OUTPUT CONDUCTOR OF EACH RECTIFIER. EACH CIRCUIT BREAKER SHALL HAVE A CONTINUOUS CURRENT RATING WHICH IS NOT LESS THAN 120 PERCENT OF THE CONTINUOUS FULL-LOAD CURRENT RATING OF THE RECTIFIER; OR | (b) Direct-current circuit breakers installed or rebuilt after the effective date of this provision at rectifiers shall have continuous current ratings not less than 120 percent of the continuous full-load direct-current ratings of the rectifiers. | (b) Direct-current circuit breakers installed at rectifiers shall have continuous current ratings not less than 120 percent of the continous full-load direct-current ratings of the rectifiers. |
| (ii) A MOLDED-CASE BREAKER CONNECTED IN SERIES WITH EACH UNGROUNDED ALTERATING-CURRENT CONDUCTOR SUPPLYING POWER TO THE RECTIFIER BRIDGE. EACH CIRCUIT BREAKER SHALL HAVE A CONTINUOUS CURRENT RATING WHICH IS NOT LESS THAN THE CONTINUOUS FULL-LOAD CURRENT RATING OF THE RECTIFIER. | (c) No comment. | (c) Alternating-current circuit breakers installed at rectifiers shall have an interrupting current rating not less than 20 times the continuous full-load current ratings of the rectifiers. |
| (2) PARALLEL-CONNECTED RECTIFIER TROLLEY SYSTEMS SHALL BE PROTECTED BY AT LEAST TWO DIRECT-CURRENT CIRCUIT BREAKERS CONNECTED IN SERIES WITH THE UNGROUNDED OUTPUT CONDUCTOR OF EACH RECTIFIER. THE CIRCUIT BREAKERS SHALL BE INSTALLED AS TIE-FEEDER CIRCUIT BREAKERS BETWEEN THE RECTIFIER AND ADJACENT RECTIFIERS. EACH CIRCUIT BREAKER SHALL HAVE A CONTINOUS CURRENT RATING WHICH IS NOT LESS THAN 120 PERCENT OF THE CONTINUOUS FULL-LOAD CURRENT RATING OF THE RECTIFIER. TIE-FEEDER BREAKERS LOCATED AT A PARALLEL-CONNECTED RECTIFIER SHALL BE INTERLOCKED SO THAT THE CIRCUIT BREAKERS OPEN WHEN THE RECTIFIER BRIDGE LOSES ITS ALTERNATING-CURRENT SOURCE OF POWER OR WHEN ANY MAIN CIRCUIT BREAKER LOCATED BETWEEN THE TIE-FEEDER CIRCUIT BREAKERS AND THE RECTIFIER OPENS. | (d) No comment. | (d) Alternating-current circuit breakers installed in the supply conductors to the rectifier bridge shall have continuous current ratings not less than the continuous full-load direct-current rating of the rectifiers. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| IN ADDITION, TIE-FEEDER CIRCUIT BREAKERS MAY BE INSTALLED AT OTHER LOCATIONS BETWEEN RECTIFIERS, AND CIRCUIT BREAKERS MAY BE INSTALLED ON STUB-FEED BRANCH CIRCUITS.<br>(b) CIRCUIT BREAKERS SHALL NOT BE CONNECTED IN PARALLEL.<br>(c) EACH DIRECT-CURRENT CIRCUIT BREAKER SHALL HAVE A MINIMUM | | |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| Sec. 75.1001 Overcurrent protection.<br>Trolley wires and trolley feeder wires shall be provided with over-current protection ** EITHER BY CIRCUIT BREAKERS OR FUSES WHERE ALLOWED BY 30 CFR 75.1001-2. THESE DEVICES SHALL DEENERGIZE THE AFFECTED CIRCUIT UPON OCCURRENCE OF AN ARCING SHORT CIRCUIT AT ANY POINT IN THE SYSTEM. THE ARCING SHORT-CIRCUIT CURRENTS SHALL BE DETERMINED AT FREQUENT INTERVALS AS SPECIFIED IN 30 CFR 75.1006(a). | § 75.1005 Circuit protection.<br>Trolley wires and trolley-feeder wires shall be protected against short circuits *** by direct-current circuit breakers.<br>Delete "overcurrents". | Sec. 75.1005 Circuit Protection<br>Trolley wires and trolley feeder wires shall be protected against short circuits and overcurrents by direct-current circuit breakers.<br>(a) Two direct-current tie-feeder circuit breakers shall be used at each parallel-connected rectifier.<br>(b) Each tie-feeder circuit breaker located at a parallel-connected rectifier shall automatically open when the rectifier bridge loses its source of power or when any main circuit breaker located between the tie-feeder breaker and the rectifier opens. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| § 75.506 DISCONNECTING DEVICES; LOCKOUT AND TAGGING PROCEDURES; DESIGN OF LOCKING DEVICES.<br>(Fomerly §§ 75.509, 75.511 and 75.705)<br>(a) EXCEPT AS PROVIDED IN 30 CFR 75.507(a) AND (b), PRIOR TO COMMENCING ELECTRICAL WORK, THE PERSON WHO IS TO PERFORM ELECTRICAL WORK SHALL OPEN THE DISCONNECTING DEVICE, TAG AND LOCK OUT THE DISCONNECTING DEVICE, AND KEEP THE KEY ON HIS PERSON WHILE THE ELECTRICAL WORK IS BEING PERFORMED. THE TAG SHALL BEAR THE NAME OF THE PERSON WHO OPENED THE DISCONNECTING DEVICE. LOCKS AND TAGS SHALL BE REMOVED ONLY BY THE PERSON WHO INSTALLED THEM OR, IF SUCH PERSON IS UNAVAILABLE, BY A PERSON DESIGNATED BY THE OFFICIAL RESPONSIBLE FOR MAINTENANCE OF THE CIRCUITS AND EQUIPMENT. | §75.503 Work on electric circuits and equipment.<br>(a) No comment.<br>In cases where locking out is not possible, the disconnecting device shall be opened and suitably tagged. | §75.503 Work on electric circuits and equipment.<br>(a) Except when necessary for troubleshooting and testing of low-voltage circuits and equipment, electric circuits and equipment shall be de-energized, locked-out, and tagged before electrical work is started. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| § 75.507 TROUBLESHOOTING AND TESTING. (Formerly § 75.509<br>(a) ELECTRIC CIRCUITS AND EQUIPMENT MAY REMAIN ENERGIZED WHEN NECESSARY FOR ELECTRICAL TROUBLESHOOTING AND TESTING FOR THE PURPOSE OF DETERMINING VOLTAGE AND CURRENT VALUES. TROUBLESHOOTING AND TESTING OF ENERGIZED CIRCUTS AND EQUIPMENT SHALL ONLY BE DONE BY A QUALIFIED ELECTRICIAN OR BY A PERSON UNDER THE DIRECT SUPERVISION OF A QUALIFIED ELECTRICIAN, WHO SHALL BE PHYSICALLY PRESENT AND WITHIN SIGHT WHILE TROUBLESHOOTING AND TESTING ARE BEING PERFORMED. PERSONS PERFORMING TROUBLESHOOTING AND TESTING SHALL WEAR GLOVES RATED AT LEAST FOR THE NOMINAL VOLTAGE OF THE CIRCUIT WHEN PERFORMING SUCH WORK. | § 75.503 Work on electric circuits and equipment.<br>(a) No comment. | § 75.503 Work on electric circuits and equipment.<br>(a) Except when necessary for troubleshooting and testing of low-voltage circuits and equipment, electric circuits and equipment shall be de-energized, locked-out, and tagged before electrical work is started.<br>(b) Before troubleshooting and testing a low-voltage circuit contained in a compartment with a high-voltage circuit, the high-voltage circuit shall be de-energized, locked-out, and tagged, or isolated from the low-voltage circuit.<br>(c) High-voltage lines on the surface shall be de-energized and grounded before work is done on them, except that repairs may be permitted in the case of energized surface high-voltage lines if such repairs are made by a person trained to perform this type of work. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| § 75.509 ELECTRIC CIRCUITS AND EQUIPMENT; EXAMINATION AND TESTING. (Formerly §§ 75.512, 75.512-1 and 75.512-2)<br>All electric CIRCUITS AND equipment SHALL BE TESTED AND EXAMINED WHEN INITIALLY PLACED IN SERVICE AND REQUENTLY THEREAFTER by a qualified ELECTRICIAN to assure THAT THE EQUIPMENT DOES NOT CONSTITUTE A FIRE, ELECTRIC SHOCK, IGNITION, OR OPERATIONAL HAZARD TO THE USER OR OPERATOR OF SUCH EQUIPMENT OR TO OTHER MINERS. WHEN THE PERSON MAKING THE REQUIRED EXAMINATION DISCOVERS A VIOLATION OF ANY MANDATORY SAFETY STANDARD OF THIS PART 75 OR ANY OTHER HAZARDOUS CONDITION, the equipment shall be removed from service, DEENERGIZED, AND SUITABLY TAGGED UNTIL APPROPRIATE REPAIRS ARE MADE. A WRITTEN REPORT OF THE REQUIRED examinations AND TESTS shall be kept FOR A PERIOD OF AT LEAST ONE YEAR and shall be made available to authorized representatives of the Secretary OR A REPRESENTATIVE OF THE miners. ** | § 75.504 *** Examination of self-propelled and portable electric equipment.<br>(a) A qualified person shall examine *** all permissible self-propelled and portable electric equipment at least once every seven days in which the equipment is used and all nonpermissible self-propelled and portable electric equipment at least once every fourteen days in which the equipment is used.<br>(b) The person making the examination shall certify by initial and date that the examinations were performed. Hazards shall be corrected or recorded if not corrected by the end of the shift. | §75.504 Testing and examination of self-propelled and protable electric equipment.<br>A qualified person shall examine and test all self-propelled and portable electric equipment at least once every seven days in which the equipment is used; certify, by initial and date, that tests and examinations were performed. Hazards shall be corrected or recorded if not corrected by the end of the shift. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| § 75.521-2 Deenergization devices **; INSTALLATION; PERFORMANCE. (Formerly §§ 75.523, 75.523-1, and 75.523-2)<br>(a) ** ALL RUBBER-TIRED AND CRAWLER-MOUNTED, self-propelled electric ** equipment which is used in the active workings of each underground mine ** shall ** be provided with a device that will quickly deenergize the tramming motors of the equipment in the event of an emergency. IN ADDITION, THE DEVICE SHALL ACTIVATE THE EMERGENCY PARKING BRAKE ON RUBBER-TIRED SELF-PROPELLED ELECTRIC EQUIPMENT.<br>(c) Dennergization of the tramming motors AND ACTIVATION OF THE EMERGENCY PARKING BRAKE of self-propelled electric equipment shall be provided by ** THE ACTUATION OF A BAR ** which shall extend a sufficient distance in each direction to permit quick deenergization of the tramming motors of self-propelled electric equipment from all locations from which the equipment can be operated. | §75.516 Braking systems for rubber-tired self-propelled electric equipment.<br>Delete.<br>REASON: This provision should be addressed when MSHA deals with Subpart O from which it is derived. It is not, in reality, an electrical standard.<br>Furthermore, MSHA concurrently is engaged in revising its approval and certification regulations for permissible equipment. Any requirements for brakes should be coordinated among the agency's various rulemaking activities in this area. | §75.515 De-energization.<br>(a) Except for equipment with substantially constructed cabs which meet the requirements of 75.1710, self-propelled electric face equipment shall have devices that will permit the operator to quickly de-energize the tramming motors of the equipment in the event of an emergency. Other devices which would stop the equipment in an equally effective manner may be used in lieu of de-energization of the tramming motors.<br>(b) When not in use, power circuits underground shall be de-energized on idle days and idle shifts, except that rectifiers and transformers may remain energized.<br>§75.516 Branking systems for rubber-tired self-propelled electric equipment.<br>(a) Rubber-tired self-propelled electric equipment shall be provided with --<br>(1) A service brake system capable of stopping and holding the fully loaded equipment at any location when the brankes are applied; and<br>(2) A parking brake system capable of holding the fully loaded equipment in a stationary position at any location when the brakes are applied, unless the driving mechansim payments prevents accidental movement of the equipment when parked.<br>(b) When equipment is parked on a grade, the parking brake shall be applied upon leaving the controls and the |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| | | wheels of the equipment shall be blocked when the parking brake system uses trapped hydraulic or pneumatic pressure. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| Sec. 75.307 METHANE EXAMINATIONS.<br>(b) THE METHANE CONTENT SHALL NOT EXCEED 1.0 VOLUME PER CENTUM IN ANY WORKING PLACE if at any time the air IN SUCH working place, when tested contains 1.0 volume per centum or more of methane, changes or adjustments shall be made at once in the ventilation in such mine so that such air shall contain less than 1.0 volume per centum of methane. While such changes or adjustments are underway and until they have been achieved. ELECTRIC EQUIPMENT SHALL NOT BE ENERGIZED, TAKEN INTO OR OPERATED IN SUCH PLACE. Power to electric face equipment ALREADY located in such place shall be cut off, no other work shall be permitted in such place, and due precautions shall be carried out under the direction of the operator or his agent so as not to endanger other areas of the mine. If at any time such air contains 1.5 volume per centum or more of methane, all persons, except those referred to in section 104(c) of the Act, shall be withdrawn from the area of the mine endangered thereby to a safe area, and all electric power shall be cut off from the endangered area of the mine, until the air in such working place shall contain less than 1.0 volume per centum of methane. | Sec. 75.324 Actions for excessive methane.<br>The provisions of the preproposal draft in Sec. 75.324 are less clear than those of the existing regulations. Experience operating within the existing provisions has permitted both mine management and operators of equipment to become intimately familiar with the requirements. Any changes would only serve to disrupt this continuity. | Sec. 75.324 Actions for excessive methane.<br>(c) When 1.0 percent or more of methane in air is present in a working place, including where shortwall or longwall mining is used, or in a belt haulageway<br>(1) Electrically-operated equipment in the affected working places, shortwall or longwall faces shall be deenergized immediately and<br>(2) Changes or adjustments in ventilation or in the mining cycle shall be made immediately to reduce the concentration of methane in air to less than 1.0 percent.<br>(d) When 1.5 percent or more of methane in air is present in a working place, including where shortwall or lon longwall mining is used, or in a belt haulageway:<br>(1) All persons shall be withdrawn from the affected area, except for those persons authorized by the operator to take corrective action and authorized representatives of the Secretary;<br>(2) All electric power to equipment in affected areas shall be disconnected at the power source; and<br>(3) Changes or adjustments in ventilation or in the mining cycle shall be made immediately to reduce the concentration of methane in air to less than 1.0 percent.<br>(e) When 1.5 percent or more of methane in air is present in a return air split between the last working place on a working section and where that split of air meets another split of air, seal or mined-out area:<br>(1) Electrically-operated equipment in the affected split shall be deenergized immediately; and<br>(2) Changes or adjustments in ventilation or in the mining cycle shall be made immediately to reduce |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| | | Sec. 75.324 (continued)<br>the concentration of methane in air to less than 1.5 percent.<br>(f) When 2.0 percent or more of methane in air is present in a return air split between the last working place on a working section and where that split of air meets another split of air, seal or mined-out areas; in a bleeder splitof air just before the air in that split enters another split of air; or in a return air course outby connectors:<br>(1) All persons shall be withdrawn from the affected split, except persons authorized by the operator to take corrective action and authorized representatives of the Secretary;<br>(2) All electric power to equipment in the affected split shall be disconnected at the power source; and<br>(3) Changes or adjustments in ventilation or in the mining cycle shall be made immediately to reduce the concentration of methane in air:<br>(i) To less than 1.5percent in the affected return air split between the last workingplace on the working section and where that split meets another split of air, seal or mined-out area;<br>(ii) To 2.0 percent or less in the affected bleeder split of air just before the air in that split enters another split of air; and<br>(iii) To 2.0 percent or less in the affected return air course outby connectors. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| Sec. 75.328-3 Sealing of GOB Areas.<br>WHENEVER IT HAS BEEN DETERMINED, BY MEASUREMENTS AND TESTS IN THE BLEEDER ENTRIES AND ABANDONDED AREAS, OR AT DESIGNATED EVALUATION POINTS ON THE PERIMETER OF SUCH AREAS AS PRESCRIBED IN THIS SEC. 75.328-1, AT LEAST A PERCEPTIBLE MOVEMENT OF AIR DOES NOT EXIST AND THAT VENTILATION OF THESE AREAS CANNOT BE MAINTAINED ADEQUATE TO DILUTE, RENDER HARMLESS AND CARRY OFF METHANE AND TO MAINTAIN THE QUALITY OF THE AIR IN SUCH AREAS AT NOT LESS THAN 19.5 COLUME PER CENTUM OF OXYGEN, NOR NOT MORE THAN 0.5 VOLUME PER CENTUM OF CARBON DIOXIDE, AND DOES NOT MEET OTHER PROVISIONS OF SEC. 75.301, THE AREA SHALL BE SEALED.<br>SEC. 75.329 EXISTING ABANDONED AREAS.<br>ABANDONED AREAS IN EXISTENCE ON THE EFFECTIVE DATE OF THIS REGULATION AND ABANDONED AREAS DEVELOPED WITHIN 1 YEAR AFTER THE EFFECTIVE DATE OF THIS REGULATION SHALL BE VENTILATED OR SEALED IN A MANNER PRESCRIBED BY THE DISTRICT MANAGER IN THE APPROVED VENTILATION SYSTEM AND METHANE AND DUST CONTROL PLAN, EXCEPT THAT SUCH AREAS CANNOT BE EXPENDED WITHOUT COMPLIANCE WITH SEC. 75.328, SUBSECTION 75.328-1 AND 75.328-2. | Where bleeder systems are used, they shall route gases from the areas where pillars are being recovered and from the worked-out area into a return aircourse or to the surface of the mine. After completion of pillar recovery in the area, the area may be sealed, or may be ventilated as specified herein. | Sec. 75.335 Worked-out areas and areas where pillars are being recovered.<br>If results of air measurements or gas tests are evaluation points for bleeder entries indicate that a bleeder system does not route gases from a worked-out area into a return air course or to the surface of the mine, the condition shall be corrected or the affected bleeder entries shall be sealed. |

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| Sec. 75.1701 Abandonded area adjacent mines; drilling of boreholes.<br>(a) Whenever any working place approaches within:<br>(1) Fifty feet of abandonded areas in the mine as shown by surveys made by a registered engineer or surveyor, or<br>(2) Within 200 feet of any other abandonded area of the mine which ARE NOT VERIFIED BY SURVEYS MADE BY A REGISTERED ENGINEER OR SURVEYOR, and which cannot be inspected and which may contain dangerous accumulations of water or gas, or<br>(3) Within 200 feet of any working of an adjacent mine, ** boreholes NOT LESS than 20 feet in depth shall be drilled in advance of the working face of such working place and shall be maintained to a distance of 10 feet in advance of the advancing working face. BOREHOLES DRILLED INTO THE WORKING FACE SHALL BE DRILLED NEAR EACH RIB AND AT INTERVALS OF NOT MORE THAN 8-FEET ACROSS THE FACE. ** Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet at an angle of 45 degrees. Such rib holes shall be drilled in one or both ribs of such working place as may be necessary for adequate protection of miners in such place.<br>(b) WHENEVER ANY WORKINGPLACE IN AN ACTIVE COAL MINE IS PROJECTED TO MINE UNDER ANOTHER MINE CONTAINING A KNOWN BODY OF WATER OR WHERE CONDITIONS IN SUCH MINE CANNOT BE DETERMINED AND THE SEPARATION BETWEEN SEAMS IS 30 FEET OR LESS, THE OVERLYING MINE SHALL BE DEWATERED OR THE MINE OPERATOR SHALL DRILL BOREHOLES IN THE ROOF TO A DEPTH OF 10 FEET.<br>(c) WHENEVER A BOREHOLD DRILLED IN ACCORDANCE WITH PROVISIONS OF THIS SEC. 75.1701 PENETRATES AN AREA THAT CANNOT | No provision | Sec. 75.1701 Abandoned areas, adjacent mines; drilling of boreholes.<br>Whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or supervisor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees. Such rib holes shall bedrilled in one or both ribs of such working place as may be necessary for adequate protection of miners in such place. |

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| Sec. 75.1701 (continued)<br>BE EXAMINED, A CERTIFIED PERSON SHALL:<br>(1) DETERMINE IF AIR IS INTAKING OR EXHAUSTING FROM THE AREA PENETRATED.<br>(2) MAKE TESTS FOR METHANE AND OXYGEN DEFICIENCY AND DETERMINE IF ANY WATER IS IMPOUNDED IN AREA PENETRATED.<br>(d) WHENEVER TESTS CONDUCTED AT THE BOREHOLES INDICATE THE PRESENCE OF MORE THAN 1.0 VOLUME PER CENTUM OF METHANE OR AN ATMOSPHERE DEFICIENT IN OXYGEN OR HARMFUL CONCENTRATIONS OF CARBON MONOXIDE CARBON DIOXIDE, OR OTHER GASES, OR WHERE ACCURATE OR DEFINITE TESTS CANNOT BE ESTABLISHED DUE TO AIR ENTERING ABANDONED AREAS THROUGH SUCH BOREHOLES, OR FOR ANY OTHER REASON (FOR EXAMPLE, WATER DISCHARGING FROM BOREHOLES). THE BOREHOLES SHOULD BE PLUGGED BY THE USE OF A WOODEN PLUG OR OTHER ACCEPTABLE DEVICE UNTIL SUCH TIME AS THE ATMOSPHERE OF THE ABANDONED AREA CAN BE DETERMINED AND A PLAN FOR MINING INTO SUCH AREAS SUBMITTED TO THE DISTRICT MANAGER FOR APPROVAL, AND MINING SHALL NOT PROCEED INTO THE ABANDONED AREA UNTIL THE PLAN HAS BEEN APPROVED. THE PLAN SHALL:<br>(1) SHOW IN DETAIL THE SECTION AND WORKING PLACE VENTILATION, VENTILATION CONTROLS, AND THE AIR QUANTITIES AND VELOCITIES,<br>(2) DESCRIBE THE PROCEDURES TO BE USED AND SAFETY PRECAUTIONS TO BE FOLLOWED DURING MINING THROUGH OPERATIONS, AND<br>(i) WHERE AN AREA TO BE PENETRATED CONTAINS AN ACCUMULATION OF WATER, A DETAILED DEWATERING PLAN SHALL BE INCLUDED.<br>(e) WHEN MINING INTO ANY AREA THAT IS INACCESSIBLE FOR EXAMINATION THE FOLLOWING SAFETY PRECAUTION SHALL BE FOLLOWED:<br>(i) MINING THROUGH OPERATIONS SHALL BE UNDER DIRECT SUPERVISION OF A CERTIFIED PERSON. | | |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| Sec. 75.1701 (continued)<br>(ii) MINING INTO AN ABANDONDED AREA CONTAINING MORE THAN 1.0 VOLUME PER CENTUM METHANE, A DEFICIENCY OF OXYGEN OR OTHER HARMFUL GASES SHALL BE DONE ON AN IDLE SHIFT. ONLY THOSE PERSONS ENGAGED IN MAKING THE CUT-THROUGH SHALL BE ASCERTAINED AND THE AREA DETERMINED SAFE BY A CERTIFIED PERSON.<br>(iii) WHEN CUTTING-THROUGH INTO AN AREA CONTAINING 1.0 VOLUME PER CENTUM OF METHANE OR OTHER EXPLOSIVE OR NOXIOUS OR POISONOUS GASES, PERSONS ENGAGED IN CUTTING THROUGH SHALL BE TRAINED IN THE USE OF AND SHALL USE SELF-CONTAINED BREATHING APPARATUS, AND, NON-SPARKING TOOLS.<br>(iv) THE DISTRICT MANAGER OR SUBDISTRICT MANAGER OF THE DISTRICT IN WHICH THE MINE IS LOCATED SHALL BE NOTIFIED AS TO WHEN MINING THROUGH OPERATIONS WILL BE DONE, AND<br>(v) ALL PERSONS ENGAGED IN THE MINING THROUGH OPERATIONS SHALL BE MADE FAMILIAR WITH THE PLAN FOR CUTTING-THROUGH. | | |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| Sec. 75.302-1 Installation of line brattice and other devices. | Sec. 75.330 Face ventilation control devices. | Sec. 75.330 Face ventilation control devices. |
| (a) Line brattice or any other device APPROVED BY THE DISTRICT MANAGER, used to provide ventilation to the working face from which coal is being cut, mined or loaded BY ANY MEANS INCLUDING HAND AND MECHANICAL LOADING, AND WHERE COAL IS BEING DRILLED FOR BLASTING BY HAND-HELD OR MOBILE COAL DRILLS and in any other place designated by the *** District Manager **, shall be installed at a distance no greater than 10 feet from the area of deepest penetration to which any portion of the face has been advanced unless a greater distance is approved by the District Manager. | (a) Unless otherwise approved by the District Manager, brattice cloth, ventilation tubing and other such face ventilation control devices used in working places shall be made of flame-resistant material to the extent the flame spread index shall be 25 or less. | (a) Brattice cloth, ventilation tubing and other face ventilation control devices shall be made of flame-resistant material approved by the Secretary. |
| | | (b) Ventilation control devices shall be used from the last open crosscut so that concentrations of respirable dust, methane and other harmful gases do not exceed the applicable standards. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| Sec. 75.307 Methane Examinations.<br>A qualified person shall make tests for methane AT THE LAST ROW OF ROOF SUPPORTS, OR CLOSER IF REQUIRED BY THE DISTRICT MANAGER, in each working place immediately before electrically operated equipment is energized and at intervals of not more than 20 minutes WHILE SUCH EQUIPMENT IS ENERGIZED. THE DISTRICT MANAGER MAY REQUIRE MORE FREQUENT EXAMINATIONS. | No Comment. | Sec. 75.362 On-shift examination for hazardous conditions and tests for methane.<br>(f) A qualified person designated by the operator shall make tests for methane in working places at the last roof supports or, when shortwall or logwall mining systems are used, at the headgate and tailgate:<br>(1) Immediately before electrically operated equipment is taken into or is energized in these areas;<br>(2) In underground areas that have not been preshift examined where unattended diesel equipment or an electrical installation, except electrical cables, will be energize on the shift; and<br>(3) At other intervals specified in the approved ventilation plan. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| Sec. 75.303 Preshift examinations. | Sec. 75.360 Hazardous conditions. | Sec. 75.360 Preshift examination. |
| Within 3 hours immediately preceding the beginning of any shift and before any miners in such shift enters the UNDERGROUND workings of a coal mine, certified persons designated by the operator of the mine shall examine such workings and any other underground area of the mine designated by the DISTRICT MANAGER.<br>(a) FOR A COAL-PRODUCTION SHIFT, SUCH EXAMINATION SHALL INCLUDE:<br>(1) ALL UNDERGROUND AREAS OF THE MINE WHERE MINERS ARE ASSIGNED TO WORK OR TRAVEL.<br>(2) ALL ROADWAYS, INCLUDING TRACK HAULAGEWAYS TO BE USED ON THE SHIFT,<br>(3) Conveyor belts on which men are transported, AND AREAS ALONG ALL CONVEYOR BELT ENTRIES WHERE MINERS ARE ASSIGNED TO WORK OR TRAVEL,<br>(4) Approaches to abondonded areas, and accessible falls and ROOF CAVITIES ALONG HAULAGEWAYS AND TRAVELWAYS,<br>(5) ALL SEALS ALONG INTAKE AIRWAYS,<br>(6) All DOORS ACROSS HAULAGEWAYS, AND<br>(7) EVERY WORKING SECTION OF THE MINE INCLUDING WORKING SECTIONS NOT PRODUCING COAL ON THAT SHIFT AND ALL VENTILATION CONTROLS AND,<br>(8) ALL IDLE AREAS.<br>(b) FOR A SHIFT DURING WHICH COAL IS NOT BEING PRODUCED, BUT MINERS ARE ASSIGNED DUTIES UNDERGROUND, SUCH EXAMINATION SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO:<br>(1) ALL UNDERGROUND AREAS OF THE MINE WHERE MINERS ARE ASSIGNED TO WORK OR TRAVEL, INCLUDING ROOF CAVITIES ALONG SUCH AREAS,<br>(2) ALL ENTRIES WHERE TROLLEY WIRES AND TROLLEY FEEDER WIRES ARE TRANSPORTED, AND CONVEYOR BELT ENTRIES WHERE MINES ARE ASSIGNED TO WORK OR TRAVEL ON THAT SHIFT. | No comment except we suggest inserting the word "or" at the end of (a), for clarity.<br>Sec. 75.360 ***Examinations.<br>(a) Specified preshift examination locations.<br>Within 3 hours preceding the beginning of any shift, and before any miner in such shift, other than certified persons conducting examinations required by this section or Subpart D, enters the active workings of a coal mine, certified persons designated by the operator of the mine shall examine the following:<br>(1) Those segments of belt conveyors on which miners are scheduled to be transported on such shift and the entries in which such belt conveyors segments are located;<br>(2) Those segments of travelways and roadways in or on which miners are scheduled to travel or be transported on such shift;<br>(3) Those active workings designated as working sections in which miners are scheduled to work or travel during such shift. In examining such working sections, such examiner(s) shall:<br>(i) Make tests in each working place in such working section for accumulations of methane with means approved by the Secretary for detecting methane;<br>(ii) Make tests in each working place in such working section for oxygen deficiency with a | (a) Within 3 hours preceding the beginning of any shift and before any person on the oncoming shift, other than certified persons conducting examinations required by Subpart D, enters any underground area of the mine, a certified person designated by the operator shall make a preshift examination.<br>(b) The person conducting the preshift examination shall examine for hazardous conditions and test for methane and oxygen deficiency at the following locations:<br>(1) Roadways and track haulageways where persons are scheduled to work or travel during the oncoming shift.<br>(2) Belt conveyors which will be used to transport persons during the oncoming shift, and the entries in which the belt conveyors are located.<br>(3) Working sections, working places, faces, and ventilation controls on working sections.<br>(4) Approaches to worked-out areas on active working sections.<br>(5) Seals along intake air courses.<br>(6) Entries or roms driven 200 feet or longer off an intake air course, where intake air passes through or along these entries or rooms to a working section.<br>(7) Where unattended diesel equipment or an electrical installation, except electrical cables, will be energized during the shift.<br>(c) The person conducting the preshift examination shall measure the volume and velocity of air at the following locations: |

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|  | Sec. 75.360 (Continued) permissible flame safety lamp or other means approved by the Secretary;<br>(iii) Examine *** the roof, rib, and working faces in all working places;<br>(iv) Examine the active roadways and travelways *** in such working section;<br>(v) Examine any approaches to abandoned areas and pillared areas in such working section<br>(iv) Test by means of an anemometer or other device approved by the Secretary to determine whether the air in each split is traveling in its proper course and at its normal volume; and<br>(vii) Examine for *** other conditions which may present a hazard. | Sec. 75.360 (Continued)<br>(1) Where temporary ventilation controls are used in rooms that are 600 feet or less in depth, in the last open crosscut in the line of pillars containing the temporary controls that separate the intake air courses and the return air courses.<br>(2) In the last open crosscut of each set of entries or rooms on each working section in the line of pillars containing thepermanent stoppings that separate the intake air courses and the return air courses.<br>(3) On a longwall or shortwall, in the intake entry or entries at the intake end of the shortwall or longwall face immediately outby the face.<br>(4) At the intake end of any pillar line ---<br>(i) Where a single split of air is sued, in the intake entry immediately outby the first open crosscut outby the line of pillars being mined; or<br>(ii) Where a split system is used, in the intake entries immediately outby the split point.<br>(d) Hazardous conditions in any area of the mine where persons will work or travel shall be posted with a conspicuous warning sign where persons entering such area will be required to pass. Only persons designated by the operator to correct the condition may enter a posted area. |

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| Sec. 75.328 Ventilation of pillarED AND ABANDONDED AREAS.<br>(a) Where pillars are being WHOLLY OR PARTIALLY EXTRACTED in any area of a coal mine, such areas shall be ventilated.<br>(1) Bleeder entries or bleeder systems SHALL be used in all areas WHERE PILLARS ARE BEING PARTIALLY OR WHOLLY EXTRACTED. SUCH BLEEDER ENTRIES OR BLEEDER SYSTEMS SHALL BE ESTABLISHED FOR THE AREA PRIOR TO START OF PILLAR MINING, PARTIAL OR WHOLE.<br>(2) Bleeder entries shall be defined as special aircourses, DESIGNED FOR SHORT LIFE, and developed and maintained as a part of the mine ventilation system to continuously VENTILATE AND move GOB GASES AWAY FROM ACTIVE WORKINGS ACROSS PILLARED AREAS INTO THE BLEEDER SYSTEM AND THENCE TO THE RETURN AIRCOURSES OF THE MINE VENTILATION SYSTEM. Bleeder entries SHALL BE connected to those areas from which pillars have been partially or wholly extracted, at locations to control air flow through such AREAS, to induce drainage of gob gases from all portions of such areas, and to minimize the hazard FROM gob gases due to atmospheric pressure changes.<br>(3) Bleeder systems ahll include any combination of bleeder entries, BLEEDER OPENINGS TO THE SURFACE, bleeder entry connections to any area from which pillars are partially or wholly extracted, and all associated ventilation control devices. Such systems SHALL extend from the active pillar line of such gob to the intersection of the bleeder split with any other split of air OR TO THE SURFACE.<br>(4) Bleeders SHALL be maintained SAFE FOR TRAVEL. HOWEVER, IF IT IS DEEMED THAT BLEEDERS CAN NO LONGER BE MAINTAINED SAFE FOR TRAVEL, THE BLEEDER SYSTEM PERFORMANCE SHALL BE EVALUATED AS | Sec. 75.335 Worked-out areas and areas where pillars are being recovered.<br>(a) Worked-out areas where no pillars have been recovered shall be ventilated, or be sealed.<br>(b) No comment.<br>(c) The operator shall evaluate the need for bleeder systems in all areas where pillars are to be removed, and shall either install such systems or obtain the District Manager's approval for optional procedures that provide equivalent protection. Included in the operator's and the District Manager's evaluation shall be: the occurrence and extent of liberation of methane; the probability of spontaneous combustion; the relation of the pillared area to the seam outcrop; the methane content of the overlying strata; the probability of occurrence of surface fractures; and, any other appropriate considerations.<br>(c)(1) Where bleeder systems are used, they shall route gases from the areas where pillars are being recovered and from the worked-cut area into a return aircourse or to the surface of the mine. After completion of pillar recovery in the area, the area may be sealed, or may be ventilated as specified herein. | Sec. 75.335 Worked-out areas and areas where pillars are being recovered.<br>(a) Worked-out areas where no pillars have been recovered shall be ventilated so that gases from the worked-out area are routed into a return air course or tothe surface of the mine.<br>(b) Where pillars are being fully or partially recovered, the ventilation system shall maintain a ventilating pressure differential on the area where pillars are being recovered and on theworked-out area sufficient to continuously move gases, as demonstrated by perceptible air movement, into a return air course or to the surface of the mine.<br>(c) In a mine in which more than .25 percent of methane in air has been detected by MSHA analysis or in which there has been a methane ignition:<br>(1) Bleeder systems shall be established where pillars are being fully or partially recovered; and<br>(2) During pillar recovery and after completion of pillar recovery in an area, bleeder systems shall route gases from the areas where pillars are being recovered and from the worked-out area into a return air course or to the surface of the mine.<br>(d) Evaluation points shall be established for all worked-out areas at locations to measure the quality and quantity of air:<br>(1) Where air enters a worked-out area; and<br>(2) Where air from a worked-out area enters a return split of air. |

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| Sec. 75.328 (Continued)<br>PRESCRIBED IN SEC. 75.328-1,<br>(5) NO NEW BLEEDER ENTRY OR BLEEDER SYSTEM SHALL BE DESIGNED TO INTERSECT ANY AREA THAT CANNOT BE VENTILATED OR EVALUATED AS PRESCRIBED in subpart 75.328-1.<br>(b) WHERE PILLARS HAVE NOT BEEN WHOLLY OR PARTIALLY EXTRACTED (SECOND MINED) AND MINING IS DISCONTINUED, THE AREA SHALL BE VENTILATED AND EXAMINED OR EVALUATED AS PRESCRIBED IN SEC. 75.328-1 | | Sec. 75.335 (Continued)<br>(e) If results of air measurements or gas tests at evaluation points for bleeder entries indicate that a bleeder system does not route gases from a worked-out area into a return air course or to the surface of the mine, the condition shall be corrected or the affected bleeder entries shall be sealed. |

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| Sec. 75.300-4 Inspection, examinations, and records<br>(a) All main fans shall be inspected daily by a person trained and designated by the operator to make such inspections to insure the electrical and mechanical reliability of such fans, UNLESS SUCH FANS ARE EQUIPPED WITH A FAIL SAFE SYSTEM FOR CONTINUOUSLY MONITORING THE FAN OPERATION, INCLUDING THE CARBON MONOXIDE CONTENT OF THE EXHAUST AIR.<br>(b) WHERE A FAIL SAFE FAN CONTINUOUS MONITORING SYSTEM IS EMPLOYED, THE FAN STOPPAGE SIGNAL ALARM AND PRESSURE RECORDING GAGE SHALL BE PLACED SO THEY CAN BE SEEN OR HEARD BY A TRAINED PERSON WHO IS ALWAYS ON DUTY WHILE ANY MINER IS UNDERGROUND. SUCH MONITORING SYSTEMS AND THE ELECTRICAL AND MECHANICAL COMPONENTS OF THE MAIN FAN SHALL BE INSPECTED BY A PERSON TRAINED AND DESIGNATED BY THE OPERATOR TO MAKE SUCH INSPECTIONS AT INTERVALS NOT TO EXCEED 7 CALENDAR DAYS.<br>(c) IN THE EVENT OF FAILURE OF THE FAN CONTINUOUS MONITORING SYSTEM, THE FAN SHALL BE EXAMINED DAILY BY A PERSON TRAINED AND DESIGNATED BY THE OPERATOR TO DO SO. | Sec. 75.312 Surface main mine fan examination and records.<br>(a) Each surface main mine fan and its associated components shall be examined by a person designated by the operator for proper operation at least once each day during which the fan operates, unless a system for monitoring surface mine fan operation is used.<br>(b)(1) When a system for monitoring fan operation is used, a person(s) designated by the operator shall test the monitoring system for proper operation and shall examine the main mine fan and its associated components at least once every 30 days. | Sec. 75.312 Surface mine fan examinations and records.<br>(a) Each surface mine fan and its associated components shall be examinedby a person designated by the operator for proper operation at least once each day during which the fan operates, unless a system for monitoring surface mine fan operation is used.<br>(b)(1) When a system for monitoring fan operation is used a person designated by the operator shall test the monitoring system for proper operation and shall examine the mine fan and its associated components at least once every 30 days.<br>(2) If the monitoring system malfunctions, the malfunction shall be corrected or a person designated by the operator shall examine themine fan and its associated components for proper operation at least once each day during which the fan operates.<br>(c) Recording charts used for mine fan pressure recording devices shall be changed before completing more than one revolution.<br>(d) At least once every 30 days, each surface mine fan shall be slowed and stopped to determine that the automatic fan signal device is working properly.<br>(e) At least once every 30 days, automatic closing doors in multiple surface mine fan systems shall be tested for proper operation. |

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| Sec. 75. VENTILATION OF UNDERGROUND TRANSFORMER STATIONS, BATTERY CHARGING STATIONS, SUBSTATIONS, COMPRESSOR STATIONS, SHOPS AND PERMANENT PUMPS.<br>(a) ** Air currents used to ventilate structures enclosing PERMANENT electrical installations shall be coursed directly into the return ** or,<br>(b)(1) THE ELECTRIC INSTALLATIONS, EXCEPT UNDERGROUND SHOPS, SHALL BE HOUSED IN A FIREPROOF STRUCTURE, EQUIPPED WITH AUTOMATICALLY CLOSING FIRE DOORS ACTIVATED BY THERMAL DEVICES WITH AN ACTIVATION TEMPERATURE NOT GREATER THAN 165 DEGREES FAHRENHEIT. SUCH FIRE DOORS SHALL BE DESIGNED TO ENCLOSE ALL ASSOCIATED ELECTRIC COMPONENTS IN AN AIRTIGHT ENCLOSURE IN CASE OF A FIRE OR EXCESSIVE TEMPERATURE.<br>(2) THE ELECTRIC EQUIPMENT SHALL BE PROTECTED WITH THERMAL DEVICES, OR EQUIVALENT, DESIGNED TO REMOVE INCOMING POWER.<br>(3) AN AUTOMATIC FIRE SUPPRESSION SYSTEM SHALL BE INSTALLED AND MAINTAINED IN COMPLIANCE WITH APPLICABLE PROVISIONS OF 75.1107-3 through 75.1107-16.<br>(4) THE ELECTRICAL EQUIPMENT SHALL CONTAIN NO FLAMMABLE COOLING LIQUID OR FLAMMABLE HYDRAULIC OIL.<br>(5) GROUNDED PHASE PROTECTIVE DEVICES PROTECTING THREE-PHASE EQUIPMENT SHALL BE ADJUSTED TO REMOVE INCOMING POWER AT NOT MORE THAN 40 PERCENT OF THE AVAILABLE FAULT CURRENT.<br>(6) RECTIFYING SUBSTATIONS PROVIDING POWER TO TROLLEY SYSTEMS SHALL BE PROTECTED BY DIRECT CURRENT CIRCUIT BREAKERS WITH REVERSE CURRENT PROTECTION.<br>(7) A SIGNAL, ACTIVATED BY THE HEAT SENSORS, SHALL BE LOCATED SO THAT IT CAN BE SEEN OR HEARD BY A RESPONSIBLE PERSON.<br>(8) THE FIRE SUPPRESSION DEVICES SHALL BE EXAMINED WEEKLY. | Sec. 75.340 Underground electrical installations.<br>(c) Underground substations, power centers, stationary battery-charging stations, permanent pumps, and rectifiers that are not electrically parallel-connected may be ventilated by intake air that is not coursed directly into a return air course provided that: | Sec. 75.340 Underground electrical installations.<br>(a) Except as providedin paragraphs (b) and (c) of this section, underground substations,power centers, rectifiers, compressor stations, stationary battery-charging stations, underground shops, and permanent pumping stations withelectric motors greater than 15 horsepower shall be ventilated by intake air that is coursed directly into a return air course.<br>(b) The following electrical installations may be ventilated by intake air that is not coursed directly into a return air course:<br>(1) Rectifiers or power centers with transformers that are either portable dry-type or contain nonflammable liquid provided that such rectifiers or power centers are regularly moved as the working section advances or retreats; and<br>(2) Installations specified in paragraph (a) that are necessary for the operation of a belt conveyor and are located in an air course equipped with an early-warning fire detection system as specified in Sec. 75.350 or Sec. 75.351.<br>(c) Underground substations, power centers, stationary battery-charging stations, and rectifiers that are not parallel-connected may be ventilated by intake air that is not coursed directly into a return air course provided that:<br>(1) They are housed in a fireproof structure equipped with fireproof doors and an automatic fire suppression system; and<br>(2) When the temperature in the fireproof structure reaches 165 degrees Fahrenheit or when the |

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| Sec. 75 (continued) | | Sec. 75.340 (continued) |
| (9) THE AREA ENCLOSING THE STRUCTURE SHALL BE EXAMINED DAILY FOR HAZARDOUS CONDITIONS. A RECORD OF THE EXAMINATIONS SHALL BE KEPT IN A BOOK ON THE SURFACE. | | carbon monoxide concentration reaches 15 ppm above the established ambient level for that area, the fireproof doors shall close, incoming power to that structure shall be deenergized, and a signal shall be activated. |

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| § 75.2004-8 AUTOMATED TEMPORARY ROOF SUPPORT (ATRS) SYSTEMS.<br>(a) EXCEPT IN ANTHRACITE MINES, NO LATER THAN TWO YEARS AFTER THE DATE OF PROMULGATION OF THIS SECTION, AUTOMATED TEMPORARY ROOF SUPPORT SYSTEMS SHALL BE PROVIDED FOR THE PROTECTION OF MINERS WHEN THEY WORK OR TRAVEL BEYOND PERMANENT SUPPORTS. ALL NEW FACE EQUIPMENT PURCHASED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, THAT REQUIRES THE MINER TO PROCEED BEYOND PERMANENT ROOF SUPPORT IN THE CYCLE OF MINING SHALL BE PROVIDED WITH AN AUTOMATED TEMPORARY ROOF SUPPORT SYSTEM. AN ATRS SYSTEM IS ONE WHERE A MECHANICAL MEANS IS PROVIDED FOR THE PROTECTION OF THE MINERS WHEN ADVANCING BEYOND PERMANENT SUPPORTS. | § 75.207 Automated Temporary Roof Support (ATRS) Systems.<br>(a) In working sections of 48 inches or greater of working height, during the installation of permanent support for roof newly exposed during the mining cycle, ATRS system shall be required as follows:<br>(1) When conventional roof support is used as the sole roof support system in a mine or a mining section; | § 75.209 Automated temporary roof support (ATRS) systems.<br>(a) Except in anthracite mines and as specified in paragraph (b) of this section, an ATRS system shall be used with roof bolting machines and continuous-ming machines with integral roof bolters operated in a working section where the minimum mining height is 42 inches or more.<br>NOTE: MSHA also solicits information on the potential impact, economic and otherwise, that the ATRS provision will have on mines which employ fewer than 20 persons. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| (7) A CALIBRATED TORQUE WRENCH WITH A PROPER SOCKET, AND EXTENSION WHERE NECESSARY, THAT WILL INDICATE THE ACTUAL TORQUE ON THE ROOF BOLT SHALL BE PROVIDED ON EACH ROOF BOLTING MACHINE IN OPERATION, AND THE WRENCH SHALL BE USED TO MAKE TORQUE CHECKS WHERE TENSIONED ROOF BOLTS ARE USED.<br>(i) A CLICK-TYPE TORQUE WRENCH OR A TORQUE WRENCH SPECIFIED IN PARARGRAPH (7) SHALL BE USED TO TEST THE QUALITY OF THE GROUT WHEN NON-TENSION ROOF BOLTS ARE INSTALLED.<br>(ii) OTHER MEANS FOR CHECKING THE INTEGRITY OF THE BOLTING SYSTEM MAY BE APPROVED IN THE ROOF CONTROL PLAN. | (f) A torque wrench that will indicate the actual torque shall be used to check tensioned roof bolts subject to being torque-tested as required by paragraph (i)(3) *** of this section. A click-type tonque shall be used to test grouted roof bolts as required by paragraph (j) of this section. Other means for checking the integrity of roof bolt installation shall be approved by the District Manager. | (5) In place from which coal is produced during any portion of a 24-hour period, the actual torque or tension on at least one out of every ten mechanically anchored tensioned roof bolts shall be measured from the outby corner of the last open crosscut to the face in each advancing section. Corrective action shall be taken if the majority of the bolts measured indicate that adequate torque or tension is not being maintained. The mine operator shall certify by signature and date that these measurements have been made. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| § 75.201 ROOF CONTROL PROGRAM.<br>Each operator shall:<br>*(a)* OPERATE IN ACCORDANCE WITH AN APPROVED ROOF CONTROL PLAN;<br>*(b)* PLOT ON A MINE MAP, AVAILABLE FOR INSPECTION, ALL UNPLANNED ROOF FALLS, RIB FALLS AND COAL OR ROCK OUTBURSTS;<br>*(c)* INFORM ALL SUPERVISORS AND MINERS, WHO ARE INVOLVED IN THE INSTALLATION OF SUPPORTS, OF ANY CHANGES IN THE ROOF CONTROL PLAN IN THEIR WORKING AREA PRIOR TO IMPLEMENTING THE CHANGES;<br>*(d)* REVIEW THE ACCIDENT AND INJURY EXPERIENCE AT THE MINE AT LEAST EVERY SIX MONTHS; AND<br>*(e)* PROPOSE NECESSARY REVISIONS IN THE ROOF CONTROL PLAN TO ASSURE THAT THE PLAN IS SUITABLE FOR THE ROOF AND RIB CONDITIONS. | Section 75.223 ROOF CONTROL PROGRAM<br>(a)(1) No comment.<br>(2) When the accident and injury experience related to roof control at the mine indicates the plan is inadequate. Such accident and injury experience at each mine shall be reviewed at least every six months. | § 75.223 Evaluation and revision of roof control plan.<br>Revisions to the roof control plan shall be proposed by the operator as conditions or experience warrant. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| § 75.205 PILLAR RECOVERY (Formerly §§ 75.200.11, 75.201-2, 75.201, 75-201-1)<br>Any reduction in pillar size during INTENTIONAL RETREAT mining shall be considered pillar recovery.<br>(a) The overall pillar recovery system shall be designed to minimize the possibility of outbursts or squeezes. PILLARING METHODS SHALL BE DESIGNED TO PROVIDE A UNIFORM PILLAR LINE FOR SAFE AND ORDERLY EXTRACTION OF PILLARS.<br>(b) Where full pillar recovery is CONDUCTED, extraction shall allow total caving of the main roof in the pillared area.<br>(c) During partial pillar recovery, sufficient coal shall be left in place TO PREVENT FORCES FROM OVERRIDING THE ACTIVE WORKING PLACES.<br>(d) A combination of full and partial pillar recovery shall not be conducted on the same pillar line EXCEPT WHERE physical conditions such as standing water, adverse roof, and falls of roof, or legal requirements concerning oil and gas wells or surface subsidence dictate that some pillars of coal ** be left in place. | § 75.205 Pillar recovery.<br>(a) Pillar recovery methods shall be designed to provide for safe and orderly extraction of pillars.<br>(b) Full pillar recovery procedures shall be designed to cause total caving of the main roof in the pillared area.<br>(c) Partial pillar recovery procedures shall be designed to prevent toal caving of the main roof and minimize pressure from overriding the active working places.<br>(d) Full and partial recovery shall not be conducted on the same pillar line, except where physical conditions, e.g., such as adverse roof or bottom, falls of roof, oil and gas well barriers or surface subsidence require that partial and/or complete pillars be left in place.<br>(e) When adjacent pillars are recovered left and right from the same opening, mining of a portion of one pillar * shall be completed and at least two rows of * posts on not more than 5-foot centers or equivalent support shall be installed across that opening before mining is started in the second pillar.<br>(f) Two rows of posts on not more than 5' centers or equivalent support shall be installed near the break line between the side cut being started to recover a portion of a pillar and an area where pillars previously have been recovered.<br>(g) A row of raodside-radius (turn) posts on not more than 5'-centers or equivalent support, shall be installed (1) for the sidecut being started to recover a portion of a pillar, (2) for each part of such portion of a pillar recovered by and led mining toward an area where pillars previously have been recovered.<br>(h) Only one open roadway not more than 16 feet wide shall lead from the solid pillars to a final stamp | § 75.207 Pillar recovery.<br>Unless otherwise specified in the roof control plan, pillar recovery shall be conducted as follows:<br>(a) Except as specified in paragraph (b) of this section, before mining is started in a pillar split or lift --<br>(1) At least two rows of breakers post or equivalent support shall be installed --<br>(i) As close to the initial intended breakline as practicable; and<br>(ii) Across each opening leading into an area where full or partial pillar extraction has been completed; and<br>(2) A row of roadside-radius (turn) posts or equivalent support shall be installed leading into the split or lift.<br>(b) Before splitting pillars to gain access to an otherwise inaccessible pillar, a person designated by the operator shall determine what additional supplemental roof supports shall be installed to provide the necessary protection for the miners.<br>(c) Before mining is started on a final stump --<br>(1) At least 2 rows of posts or equivalent support shall be installed on not more than 4-foot centers on each side of the roadway; and |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| *(e)* When recovering adjacent pillars left and right from the same opening, mining shall be completed in one such pillar lift and the opening posted off with at least two rows of breaker posts on not more than 4-foot centers before operations are started in the second pillar.<br>*(f)* BREAKER POSTS OR THE EQUIVALENT SHALL BE INSTALLED ACROSS EACH OPENING LEADING INTO PILLARED AREAS WHERE MINING HAS BEEN COMPLETED. THESE POSTS SHALL BE INSTALLED UPON COMPLETION OF MINING THIS AREA AND SHALL BE INSTALLED BETWEEN ANY LIFT TO BE STARTED AND THE GOB.<br>*(g)* A row of roadside-radius (turn) posts or the equivalent SHALL be installed ** leading into pillar lifts or splits, including secondary lifts or splits in slabs, wings, or fenders.<br>*(h)* The width of the roadway leading from the solid pillars to a final stump (pushout) shall not exceed *16* feet. At least two rows of posts or their equivalent SHALL be set on each side of the roadway on not more than 4-foot centers. Only one open roadway leading to a final stump (pushout) SHALL be permitted.<br>*(i)* DURING OPEN-END PILLARING AT LEAST TWO ROWS OF BREAKER POSTS OR THEIR EQUIVALENT SHALL BE INSTAFFLED ON NOT MORE THAN 4-FOOT CENTERS. BETWEEN THE LIFT TO BE | (i) During open-end pillar extraction, at least two rows of * posts *** shall be installed on not more than 5-foot centers or equivalent support provided between the sideout being started to recover a portion of a pillar and an area where pillars have been recovered. The supports shall be maintained to within 7 feet of the face and the width of the roadway shall not exceed 16 feet. | (2) Only one open roadway, not more than 16 feet wide, shall lead from solid pillars to the final stump of a pillar.<br>(d) During open-end pillar extraction, at least 2 rows of breaker posts or equivalent support shall be installed on not more than 4-foot centers. These supports shall be installed between the lift to be started and the area where pillars have been extracted. These supports shall be maintained to within 7 feet of the face and the width of the roadway shall not exceed 16 feet. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| STARTED AND THE GOB. The width of the roadway SHALL not exceed *16* feet. THE SUPPORTS SHALL BE MAINTAINED TO:<br>(1) WITHIN 7 FEET OF THE FACE WHERE CONVENTIONAL SUPPORT SYSTEM IS BEING USED, AND<br>(2) THE LAST ROW OF PERMANENT ROOF SUPPORTS WHERE THE FULL BOLTING OR COMBINATION ROOF SUPPORT SYSTEM IS BEING USED. | | |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| § 75.201 ROOF CONTROL PROGRAM. (Formerly 75.200 in part and 75.200-1)<br>Each operator shall:<br>*(a)* OPERATE IN ACCORDANCE WITH AN APPROVED ROOF CONTROL PLAN;<br>*(b)* PLOT ON A MINE MAP, AVAILABLE FOR INSPECTION, ALL UNPLANNED ROOF FALLS, RIB FALLS AND COAL OR ROCK OUTBURSTS;<br>*(c)* INFORM ALL SUPERVISORS AND MINERS, WHO ARE INVOLVED IN THE INSTALLATION OF SUPPORTS, OF ANY CHANGES IN THE ROOF CONTROL PLAN IN THEIR WORKING AREA PRIOR TO IMPLEMENTING THE CHANGES;<br>*(d)* REVIEW THE ACCIDENT AND INJURY EXPERIENCE AT THE MINE AT LEAST EVERY SIX MONTHS; AND<br>*(e)* PROPOSE NECESSARY REVISIONS IN THE ROOF CONTROL PLAN TO ASSURE THAT THE PLAN IS SUITABLE FOR THE ROOF AND RIB CONDITIONS. | § 75.200 Control of the roof, face and ribs.<br>The roof, face and ribs of all active workings shall be supported or otherwise controlled to protect persons from the hazards relating to roof, face or ribs. ***<br>Rationale: The suggestions are for the purpose of clarifying the application of the regulation by regulation by use of a statutorily defined term. Coal and rock outbursts are among the hazards relating to roof, face or ribs. | Subpart C - Roof Support<br>§ 75.202 Protection from falls of roof, face and ribs.<br>(a) The roof, face and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| Sec. 75.1308-1 MULTIPLE BLASTING.<br>MULTIPLE BLASTING SHALL BE PERFORMED IN ACCORDANCE WITH THE FOLLOWING:<br>(a) A ROUND SHALL CONSIST OF NOT more than 20 holes UNLESS permission in writing is obtained FROM THE Coal Mine Safety and Health District Manager. | Sec. 75.1329 -- Multiple Shot Blasting<br>(a) No comment<br>(b) Blasting cut coal. When blasting cut coal:<br>(1) There shall be no loaded hole between any shot fired and the nearest kerf or shear.<br>(2) No comment<br>(3)-(5) We note that the delay times referred to in the draft proposals are not available for detonators used in the coal mining industry. Thus, we strongly urge MSHA to modify these draft proposals. We also note that ongoing USBM/MSHA research may provide justification for expansion of the currently accepted delay times, and we recommend the results of that research be considered in drafting final regulations.<br>(c)-(g) No comment | Sec. 75.1320 Multiple shot blastin blasting<br>(a) In anthracite mones, only detonators of proper strength shall be used and short delay detonators shall be used and short delay detonators ahall be used for multiple-shot blasting when required by the District Manager.<br>(b) In bituminous and lignite mines, only instantaneous and short-delay detonators of proper strength shall be used to initiate explosives.<br>(c) When blasting off the solid in bituminous and lignite mines:<br>(1) Only short-delay detonators shall be used for multiple-shot blasting;<br>(2) Each shot in the round shall be initiated in sequence from the shots in the opener holes; and<br>(3) The interval between designated delay periods of adjacent detonators shall be at least 50 milliseconds. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| Sec. 75.1322-6 FIRING PROCEDURE.<br>BATTERY STARTING AND COAL OVERHANG SHOTS SHALL BE FIRED FROM THE GANGWAY AND NOT LESS THAN 100 FEET DISTANCE AND AROUND AT LEAST ONE CORNER FROM THE BLAST. | No comment | Sec. 75.2 Definitions<br>"Blasting off the solid" is blasting coal at the working face without providing a second free face by cutting shearing or other method before blasting. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| Sec. 75.1308-6 Firing Procedure.<br>(a) ALL BLASTS SHALL BE FIRED WITHOUT UNDUE DELAY AND BEFORE ANY WORK IS DONE IN THE AREA WHICH COULD BE AFFECTED BY THE BLAST, EXCEPT THAT WHICH IS NECESSARY TO SAFEGUARD THE EMPLOYEE.<br>(b) AMPLE WARNING SHALL BE GIVEN BEFORE BLASTS ARE FIRED, AND CARE SHALL BE TAKEN TO ASCERTAIN THAT ALL PERSONS ARE IN THE CLEAR. MINERS SHALL BE REMOVED FROM ADJOINING WORING PLACES TO A SAFE LOCATION BEFORE BLASTING.<br>(c) NOT MORE THAN ONE FACE IN A WORKING PLACE SHALL BE FIRED AT ONE TIME.<br>(d) BLASTS SHALL BE FIRED FROM POWER, SIGNAL, OR OTHER SIMILAR CIRCUITS.<br>(e) MULTIPLE-SHOT BLASTING UNITS SHALL BE MAINTAINED IN A PERMISSIBLE MANNER. REPAIRS ON ALL SHORT FIRING UNITS SHALL BE PERFORMED BY THE MANUFACTURER OR HIS DESIGNATED AGENT. | Sec. 75.1334 - Firing Procedure<br>Only one face in a working place shall be blasted at a time except that for cut coal as many as three faces may be blasted at one time if each has a separate kerf and no more than 20 shots are fired in total. | Sec. 75. 1324 Firing procedure.<br>Only one face in a working place shall be blasted at a time, except that up to three faces in a working place may be blasted at a time if each face has a separate kerf and no more than 20 shots are fired in the round. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| Sec. 75. 1300 | Sec. 75.1301 -- Definitions | Sec. 75.2 - Definitions |
| BLASTING "OFF THE SOLID" IS PERMITTED ONLY AFTER WRITTEN APPROVAL OF A PLAN SUBMITTED TO THE COAL MINE SAFETY AND HEALTH DISTRICT MANAGER. THE WRITTEN APPROVAL SHALL BE BASED UPON THE PHYSICAL CONDITIONS OF THE MINE, THE RESULTS OF METHANE MEASUREMENTS TAKEN BY HAND HELD INSTRUMENTS, AND OTHER INFORMATION WHICH MAY BE REQUIRED BY THE DISTRICT MANAGER. | "Blasting off the Solid" -- Is blasting coal or rock at the working face during a normal production cycle without providing a second free face by cutting, shearing, or other method before blasting. | "Blasting off the solid" is blasting coal at the working face without providing a second free face by cutting shearing or other method before blasting. |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
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| Sec. 75.2 "ACCEPTED LARGE CAPACITY BLASTING UNITS" MEANS BLASTING UNITS WHICH HAVE BEEN TESTED AND CERTIFIED AS ACCEPTED UNDER THE PROVISIONS OF PART 24.<br>Sec. 75.2 "MULTIPLE SHOT BLASTING UNIT" MEANS BLASTING UNITS CAPABLE OF DETONATING 10 AND/OR 20 SHORT-DELAYED ELECTRIC DETONATORS AND WHICH HAVE BEEN TESTED AND CERTIFIED AS PERMISSIBLE UNDER THE PROVISIONS OF PART 25. | No comment | Sec. 75.2 Definitions<br>"Approved blasting unit" is a device that has been approved under Part 7 or Part 25 of this chapter or Bureau of Mines Schedule 16 E, May 26, 1950, that is used for firing electric detonators |

| EXPERT RECOMMENDATIONS | INDUSTRY RECOMMENDATIONS | MSHA REGULATION |
|---|---|---|
| 75.1308-4 BLASTING CIRCUITS | 75.1332 BLASTING CIRCUITS | 75.1322 BLASTING CIRCUITS |
| (c) Blasting circuits shall be wired in a single series and be tested for continuity with a blasting galvanometer equipped with a silver chloride cell or instruments designed for testing blasting circuits and approved by MSHA. | (g)- (j) No comment | (j) When ablasting circuit is tested for continuity, a blasting galvanometer or other instrument specifically designed for testing blasting circuits shall be used. |

The CHAIRMAN. Now, what has happened to that regulation in the rewrite process?

Mr. COMPONATION. Bleeder systems were a direct result of the explosion that occurred in Consol No. 9 in 1968. As coal is extracted, there becomes large void areas that, if they do not have a bleeder system—and a bleeder system is a series of entries driven on the inby or the back end of a gob, which permits the air as it is directed to the gob to flow through, around or over the gob into the bleeder systems, and the bleeder systems carry the effluent from the gob into a return and to the surface. And the main purpose of the bleeders is to provide ventilation for the gob areas that are extracted.

Now, whenever people speak of gas in the mines, it is customary to think primarily of methane. Bleeder systems are designed to remove any effluent from gobs. In fact, we have on record, we have a fatality that occurred in Virginia, I believe in the late 1970s, where five men died—not as a result of methane in the gob, but as a result of other gases, black damp. And this occurred at other times.

The .25 percent figure I disagree with because the 1969 Act does not differentiate between mines that liberate gas and mines that do not liberate gas.

Secondly, I can recall of no coal seam in the United States that somewhere does not liberate gas.

Thirdly, no one can assure that the fact that they did not find gas today there will not be gas there tomorrow.

The bleeders are necessary to assure that those gobs can be ventilated in the best manner possible to carry the liberations that occur in that gob or the gases that can accumulate because of inadequate oxygen, such as black damp, and carry it to the surface.

Along with the bleeders, I think you need to consider the one where we talk about ventilating gob areas because bleeders are primarily designed to ventilate the gob areas. That is their primary purpose.

The CHAIRMAN. Now, that is further down in the ventilation recommendations. The recommendation is, "Requires sealing of gob areas where ventilation conditions cannot be determined." The industry says, "Leaves options of sealing or ventilating gob areas." And MSHA, "Leaves option of sealing or ventilating gob areas."

What is the significance of the rewrite of the proposal that was made?

Mr. COMPONATION. If bleeders are developed, and they are effective and you can turn air into a gob area, it passes through or over and around the gob areas to remove the gases that can accumulate into a bleeder system, and you have a setup where you can get into the bleeder systems or at various locations in the bleeder systems to make required tests and checks to assure that they are operating effectively and that the gases and so forth are being removed, then it is not necessary to seal.

That sealing of gob areas is designed so that, as occurs often, the bleeders fall in, they become full of water, they come to a point where we cannot examine them to assure that they are operating effectively—in those cases, then we say the area shall be sealed.

The CHAIRMAN. Now, can you tell us have there been major mining accidents because of the lack of a bleeder system or the lack of ventilating the gob areas?

Mr. COMPONATION. Consol Number 9 is the typical.

The CHAIRMAN. And were there a number of fatalities?

Mr. COMPONATION. Seventy-eight fatalities occurred in that, and then we have a more recent, in the late 1970s—I do not know the exact date—we had a company developing an entry to intersect an abandoned gob area to drain water, and five men lost their lives, but not because of methane, but because of black damp.

The CHAIRMAN. Well, is it your conclusion that the mines will be less safe with the rewrites of these proposals?

Mr. COMPONATION. Yes. My conclusion is that no mine should be allowed to do second mining or develop gob areas without bleeders.

The CHAIRMAN. Mr. Potter, do you agree?

Mr. POTTER. I agree, and I would like to make one other remark. The 0.25 percent methane is a regression back to 1952 in Public Law 552, when if you found 0.25 methane in any open works, you classed the mine gassy. So in a sense, you are going back to the gassy, non-gassy classification of the early 1950s.

Of course, the 1969 Act did not class all mines as gassy. It simply said that all mines had to be operated as if they were gassy.

The CHAIRMAN. Well, that Act says, in the 1977 provision, Paragraph 9, "No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard."

[Excerpt from the 1969 Act follows:]

(9) No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard.

The CHAIRMAN. Do you believe that they are violating the law?

Mr. POTTER. Yes, sir. I think it would be very difficult for any mining experts to testify that to do second mining without the bleeders is as safe as mining with bleeders. And that goes true for other provisions that are on that chart.

The CHAIRMAN. Now, Mr. Potter, was the safety division directed in 1980 to conduct investigations of all multiple fatal mine accidents?

Mr. POTTER. We had an explosion at the Ferrell mine in southern West Virginia, and the safety division was given the responsibility for conducting that investigation. I think there was five people fatally injured, and that was a methane explosion. And starting with that and continuing until recent years, the Division of Safety was given the responsibility of conducting all multiple fatalities; that is, accidents where two or more miners were killed in a single accident.

The CHAIRMAN. Is this the directive here?

[The directive referred to follows:]

U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
4015 Wilson Boulevard
Arlington, Virginia 22203

February 16, 1979

MEMORANDUM FOR: DISTRICT MANAGERS, Coal Mine Health and Safety
HERSCHEL H. POTTER
JOSEPH A. LAMONICA
RONALD J. SCHELL

FROM: JOSEPH O. COOK
Administrator
for Coal Mine Safety and Health

SUBJECT: Investigation and Review of Multiple Fatalities

These instructions supplement policies established in the Manual for Investigation of Coal Mining Accidents and Other Occurrences Relating to Health and Safety dated October 1977.

The policy of notifying the Chief, Division of Safety, of all fatal injuries will continue; however, the following policies are established with respect to investigations of multiple fatalities arising from a single accident.

1. Investigations of multiple fatalities will not commence until Division of Safety personnel arrive at the mine.
2. The Report of Investigation will be prepared by representatives of the Division of Safety who participated in the investigation and released by the Office of the Administrator. District personnel will provide input and will assist in preparing the report.
3. The Division of Safety representatives will be full members of the investigation team and will be permitted to either have questions asked or ask questions.
4. The Division of Safety representatives will, in addition to participating in the physical investigation of the accident, conduct an investigation to determine if changes, modifications or improvements in Coal Mine Safety and

> Health policies or procedures are needed. A separate report will be prepared setting forth the results of the investigation and, where appropriate, recommendations for corrective actions.

Your cooperation will be greatly appreciated.

Mr. POTTER. Dated February the 16th?

The CHAIRMAN. Yes.

Mr. POTTER. That one dated February the 16th, if you will give me just a second?

Yes, that is the one. Prior to that, the safety division representative was a member of the investigation team that conducted the investigations of fatalities, multiple fatalities, but it was never put in writing. Of course, when things are not in writing, there was some unhappiness from people in the Division of Safety of their role and from the district manager's standpoint of wanting to limit that role. So it was finally reduced to writing

The CHAIRMAN. That came about as a result of a GAO recommendation, is that correct?

[The report of the GAO follows:]

089705

*REPORT TO*
*SUBCOMMITTEE ON LABOR*
*COMMITTEE ON LABOR*
*AND PUBLIC WELFARE*
*UNITED STATES SENATE*

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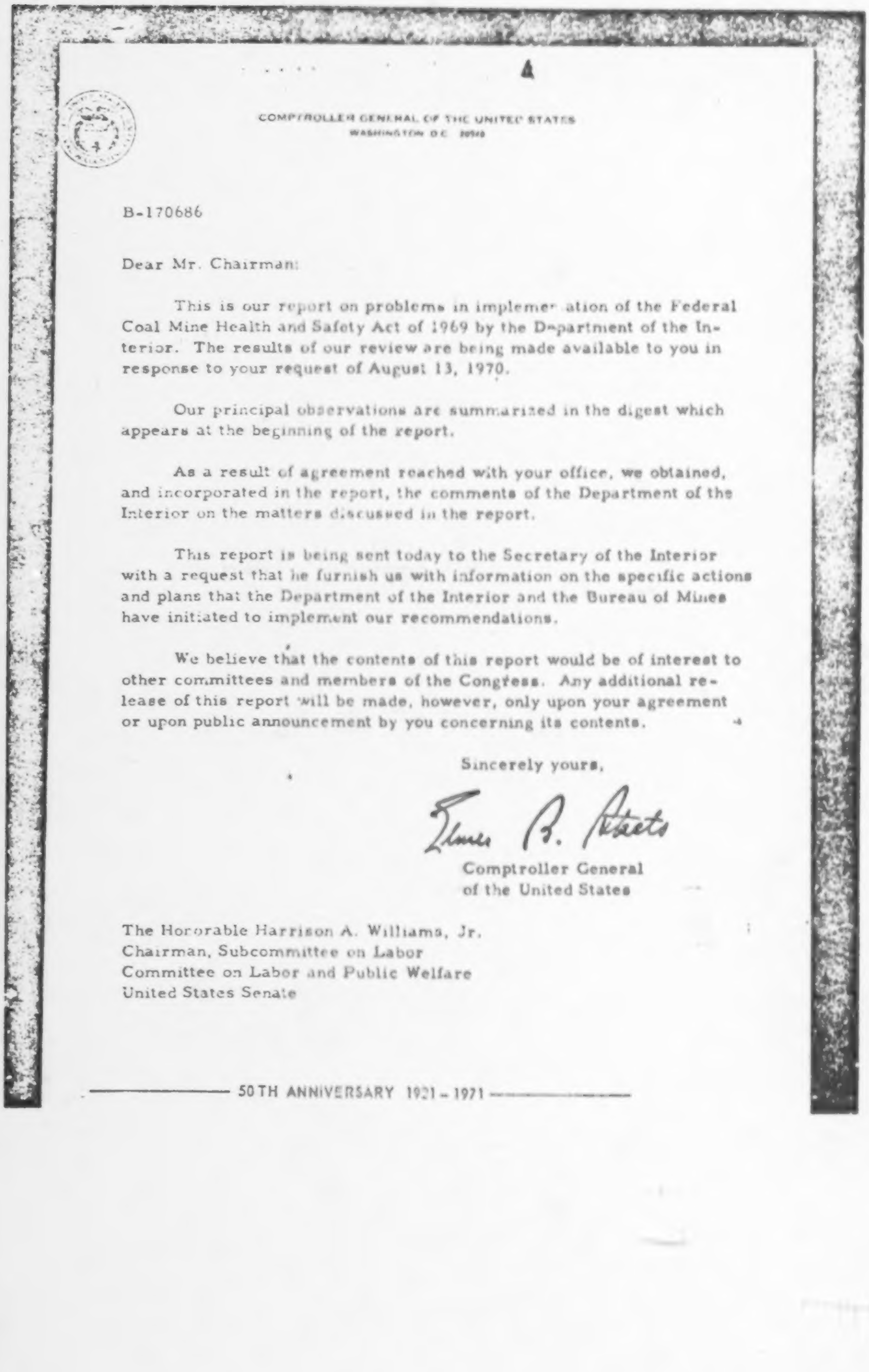
# Problems In Implementation Of The Federal Coal Mine Health And Safety Act Of 1969

B-170686

Bureau of Mines
Department of the Interior

*BY THE COMPTROLLER GENERAL*
*OF THE UNITED STATES*

911766 MAY 13, 1971



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-170686

Dear Mr. Chairman:

This is our report on problems in implementation of the Federal Coal Mine Health and Safety Act of 1969 by the Department of the Interior. The results of our review are being made available to you in response to your request of August 13, 1970.

Our principal observations are summarized in the digest which appears at the beginning of the report.

As a result of agreement reached with your office, we obtained, and incorporated in the report, the comments of the Department of the Interior on the matters discussed in the report.

This report is being sent today to the Secretary of the Interior with a request that he furnish us with information on the specific actions and plans that the Department of the Interior and the Bureau of Mines have initiated to implement our recommendations.

We believe that the contents of this report would be of interest to other committees and members of the Congress. Any additional release of this report will be made, however, only upon your agreement or upon public announcement by you concerning its contents.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

The Honorable Harrison A. Williams, Jr.
Chairman, Subcommittee on Labor
Committee on Labor and Public Welfare
United States Senate

50TH ANNIVERSARY 1921 - 1971

Regular mine inspectors make both health and safety inspections. The health inspections are less complex and do not require some of the special skills and knowledge that the regular inspectors must have. It may be possible to use some less highly qualified technicians to make health inspections to conserve the time of the regular inspectors who are in short supply. (See p. 13.)

The Bureau's practices concerning the imposition of penalties for noncompliance do not consider various factors prescribed in the act, such as the effect that such penalties will have on the operator's ability to continue in business and the operator's history of previous violations. (See p. 54.)

Shortages of certain types of equipment have been cited by the Bureau of Mines as a major cause of noncompliance with health and safety requirements. In this connection:

--The Bureau has made no overall studies of the availability of equipment required for compliance with the act and of the normal time required to obtain equipment in short supply. (See p. 56.)

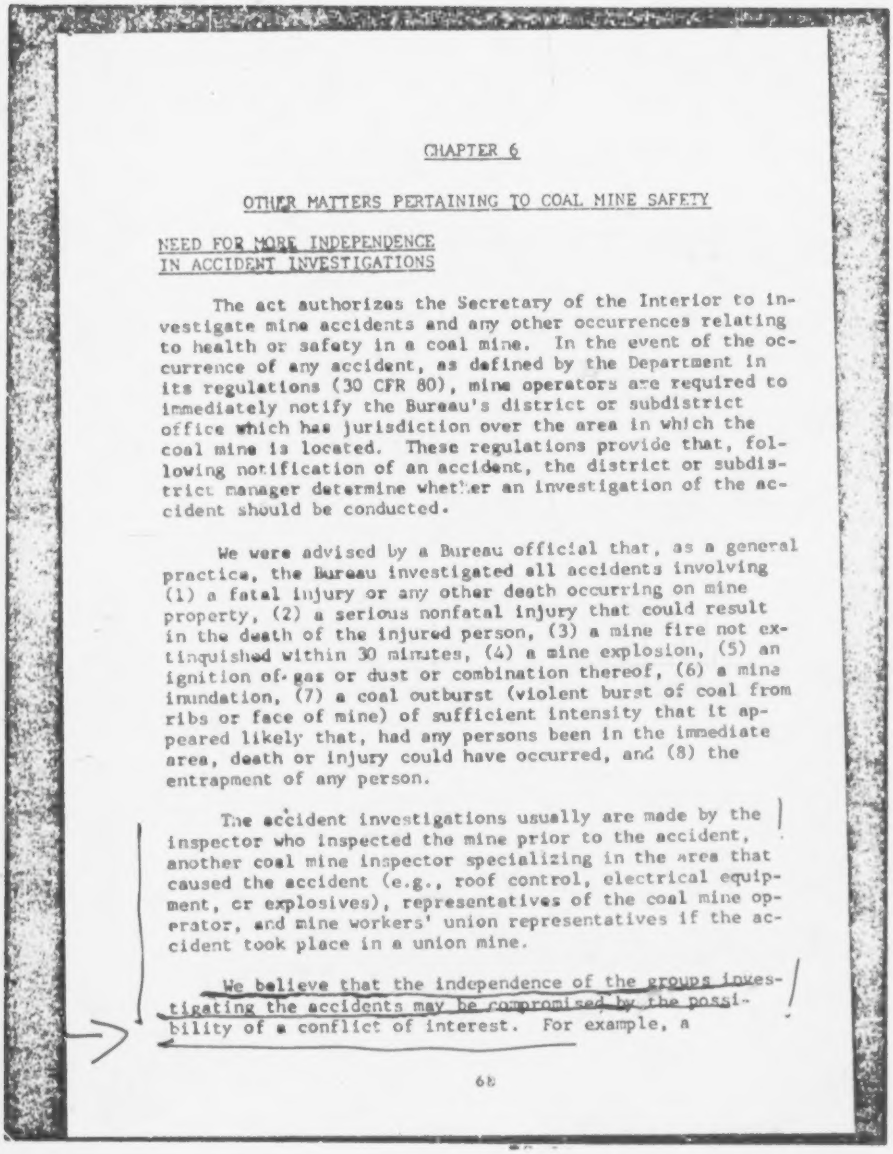
--The Bureau may have permitted unnecessarily prolonged noncompliance with certain equipment requirements by granting mine operators time extensions to obtain a particular brand that was in short supply while an essentially comparable substitute was readily available. (See p. 59.)

--The Bureau purchased more dust-sampling equipment than it needed and thus contributed to a shortage of such equipment and possibly precluded many mine operators from establishing dust-sampling programs within the time required by the act. (See p. 61.)

The team that investigates mine accidents usually includes Bureau personnel who have been involved in prior inspections of the mine or related activities or who are subordinate to officials responsible for carrying out these activities. In such cases, these personnel, in effect, are required to evaluate their own previous performance or that of officials to whom they are responsible. GAO believes that there should be greater independence in accident investigations. (See p. 68.)

Bureau inspectors are given insufficient criteria for making decisions on mine operators' compliance with health and safety standards. GAO believes that a comprehensive manual should be issued to provide inspectors with the necessary criteria and guidance. (See p. 71.)

Bureau representatives said that shortages of qualified manpower, certain equipment, and sufficient time were the principal reasons for noncompliance with the requirements of the act. GAO recognizes that the passage of the 1969 act has greatly expanded the responsibilities of the Bureau and that there are significant problems in obtaining compliance with its requirements. GAO believes, however, that more could have been done to achieve greater compliance.



## CHAPTER 6

## OTHER MATTERS PERTAINING TO COAL MINE SAFETY

### NEED FOR MORE INDEPENDENCE IN ACCIDENT INVESTIGATIONS

The act authorizes the Secretary of the Interior to investigate mine accidents and any other occurrences relating to health or safety in a coal mine. In the event of the occurrence of any accident, as defined by the Department in its regulations (30 CFR 80), mine operators are required to immediately notify the Bureau's district or subdistrict office which has jurisdiction over the area in which the coal mine is located. These regulations provide that, following notification of an accident, the district or subdistrict manager determine whether an investigation of the accident should be conducted.

We were advised by a Bureau official that, as a general practice, the Bureau investigated all accidents involving (1) a fatal injury or any other death occurring on mine property, (2) a serious nonfatal injury that could result in the death of the injured person, (3) a mine fire not extinguished within 30 minutes, (4) a mine explosion, (5) an ignition of gas or dust or combination thereof, (6) a mine inundation, (7) a coal outburst (violent burst of coal from ribs or face of mine) of sufficient intensity that it appeared likely that, had any persons been in the immediate area, death or injury could have occurred, and (8) the entrapment of any person.

The accident investigations usually are made by the inspector who inspected the mine prior to the accident, another coal mine inspector specializing in the area that caused the accident (e.g., roof control, electrical equipment, or explosives), representatives of the coal mine operator, and mine workers' union representatives if the accident took place in a union mine.

We believe that the independence of the groups investigating the accidents may be compromised by the possibility of a conflict of interest. For example, a

Fiscal year 1971 research planning appears to have been more systematic than the research planning for the prior year. The responsibility for making specific recommendations for fiscal year 1971 research was given to task groups for functional areas, such as methane control, respirable dust control, and rescue and survival systems. Research ideas have come from universities and private industry in the form of unsolicited research contracts or grant proposals, from the Bureau's day-to-day contacts with industry organizations, and from the Bureau's field research installations.

We believe that the Bureau is developing a more effective approach to its research planning. Therefore we have no suggestions for improving the planning of the Bureau's research program at this time.

## CONCLUSIONS

We believe that a change in the composition of the teams responsible for investigating coal mine accidents and in the organizational level to which these investigators report would be desirable to ensure a greater degree of independence and objectivity in carrying out the investigations.

We believe also that more definitive guidelines concerning the criteria used by inspectors to determine whether mine operators are complying with the Department's health and safety standards will provide greater assurance that such standards are being uniformly applied.

## RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

We recommend that the Secretary of the Interior require the Director of the Bureau of Mines to:

--Consider establishing a policy requiring that accident ation teams be made responsible to an organi- al level above the district offices.

--Consider establishing a requirement that accident investigation teams be composed of inspectors and other specialists who have not made recent inspections of

Mr. POTTER. There was a GAO audit, and I am not sure about my years, but it was in the early days of the 1969 Act. And then two or three years later, there was another audit, and that was one of their recommendations—that investigations of all fatalities should be out of the national office because of conflict of interest.

The CHAIRMAN. So starting in 1980, your division investigated all the multiple fatalities, is that correct?

Mr. POTTER. That is correct.

The CHAIRMAN. And at that time the people from your office would conduct an investigation and then write a report.

Mr. POTTER. That is correct.

The CHAIRMAN. And did those reports deal basically with the cause of the accidents?

Mr. POTTER. Yes, sir. Under the policy of MSHA, which goes back many years into the old Bureau of Mines—and I am talking about maybe 30, 40 years—the purpose of an investigation is to determine the cause of the accident in order to prevent a recurrence.

The CHAIRMAN. And they wrote, in addition to the reports of the results of their investigations, separate internal memos to you?

Mr. POTTER. Yes, sir. The memo that you cited dated February the 16th, in Paragraph 4, gave the Division of Safety the authority to look at the entity itself to see if there were any problems and to make recommendations for correction. Growing out of that, there were memorandums written to me setting forth what they thought the problems were as a result of the investigation of the multiple fatality.

The CHAIRMAN. And then did you, as a result of a review of those memos, write a memo to Joseph Lamonica in 1982?

[The memo referred to follows:]

SEP 28 1982

MEMORANDUM FOR: JOSEPH A. LAMONICA
Administrator
for Coal Mine Safety and Health

FROM: HERSCHEL H. POTTER Herschel H. Potter
Chief, Division of Safety

SUBJECT: Multiple Fatalities, Plan Approvals and Quality of Inspections

## Introduction

Of concern to this office is the frequency with which accidents occur that can be attributed in some degree to either inadequacies with our policies on plan approvals or the quality of inspections. In the past 18 months, the following 16 accidents occurred which resulted in multiple fatalities.

| District | Mine and Company | Classification | Date | No. of Fatalities |
|---|---|---|---|---|
| 4 | Ferrell No. 17<br>Westmoreland Coal Company | Explosion<br>(Methane) | 11/07/80 | 5 |
| 9 | Dutch Creek No. 1<br>Mid Continent Coal Company | Explosion<br>(Methane) | 04/15/81 | 15 |
| 7 | Mills Creek No. 5<br>Grays Knob Coal Company | Inundation<br>(Blackdamp) | 06/03/81 | 3 |
| 9 | Rienau No. 2<br>Northern Coal Company | Roof Fall | 07/30/81 | 2 |
| 5 | Open Fork Mine<br>Clinchfield Coal Company | Roof Fall | 10/23/81 | 2 |
| 5 | No. 1 Mine<br>Bridgett Coal Company, Inc. | Roof Fall | 11/16/81 | 2 |
| 4 | Stillhouse Run No. 1 Mine<br>Elk River Sewell Coal Co. | Roof Fall | 12/03/81 | 3 |
| 7 | No. 11 Mine<br>Adkins Coal Company | Explosives | 12/07/81 | 8 |

| District | Mine and Company | Classification | Date | No. of Fatalities |
|---|---|---|---|---|
| 7 | No. 21 Mine<br>Grundy Coal Company | Explosion<br>(Methane) | 12/08/81 | 13 |
| 7 | Jones Coal Company<br>(Illegal Mine) | Roof Fall | 12/19/81 | 2 |
| 7 | No. 1 Mine<br>WRW Corporation<br>(Illegal Mine) | Explosives | 01/05/82 | 2 |
| 6 | No. 1 Mine<br>RFH Coal Company | Explosives | 01/20/82 | 7 |
| 6 | Phelps No. 3 Mine<br>Phelps Mining, Inc. | Roof Fall | 01/22/82 | 2 |
| 9 | Vanguard No. 2 Mine<br>Energy Development Co. | Roof Fall | 02/23/82 | 2 |
| 7 | Rice Harlan Mine<br>Alliance of Puckett Coal Company, Inc. | Roof Fall | 04/27/82 | 2 |
| 5 | Hurricane Creek<br>Clinchfield Coal Company | Roof Fall | 06/02/82 | 2 |

In eight accidents, it was evident that representatives from Coal Mine Safety and Health had not carried out their mandated enforcement responsibilities to the degree that would have ensured the health and safety of the miners or in a manner expected of health and safety professionals.

## Discussion

A brief synopsis of Coal Mine Safety and Health's enforcement activities at eight of the mines listed above follows.

### Ferrell No. 17

1. Ventilation plans were approved by the District which were substandard.
2. Inspections conducted at the Ferrell No. 17 Mine were inadequate or incomplete, specifically the AAA inspection conducted in September 1980.
3. Supervision of inspection personnel by all levels of management was insufficient to ensure quality inspections and approval of ventilation plans.

Dutch Creek No. 1

1. Reportedly, more than 20 bumps occurred on the section prior to the explosion. We should have been aware of this condition since the mine is in the Resident Inspection Program.

2. Reportedly, volley firing had been taken out of the roof control plan by Mid Continent Coal Company which was approved by the District.

Mills Creek No. 5

1. A Federal inspector was in the mine and on the section that cut through into Harlan No. 1 Mine two days (June 1, 1981) before the inundation. No action was taken regarding boreholes not being drilled.

2. During approval of the ventilation plan, District personnel did not question the projected rooms that were to be driven towards the abandoned workings of the adjacent mine.

Rienau No. 2

Although the Roof Control Supervisor and Technical Support personnel recommended full overhead support, the District approved the plan which required only the installation of straight timbers as minimum roof support. In addition, the mine file for the Rienau No. 2 Mine contains several other memoranda recommending full overhead support and pointing out the inadequacies in the appproved plan.

Adkins No. 11

Supervision of inspection personnel by all levels of management was insufficient to ensure quality inspections.

Grundy No. 21

Supervision of inspection personnel by all levels of management was insufficient to ensure quality inspections and approval of ventilation plans.

RFH No. 1

Supervision of inspection personnel by all levels of management was insufficient to ensure quality inspections.

Rice Harlan Mine

The approved roof control plan was inadequate for the conditions encountered in the mine.

## Summary

The multiple fatality investigations reviewed above indicate we have been lax in carrying out our responsibilities under the Act. The practices of District 4 inspection personnel at the Ferrell No. 17 Mine are well known. The investigative reports of the accidents at the other seven mines reflect the shortcomings of the Districts' activities in each of these accidents. With eight of the sixteen investigations of multiple fatalities indicating that we are not carrying out the mandate of the Act to protect the miners, one can only surmise what would be revealed if all fatalities were investigated by personnel from the Arlington office.

Central to each of these eight accidents is the adequacy of plans required to be approved by Coal Mine Safety and Health and inspection activities of the inspectorate. Four of the accidents involve ventilation plans and two involve roof control plans. It appears plan approvals have become routine with a cavalier approach being taken to the many problems associated with this mandated responsibility.

## Recommendations

A meeting should be held with all District and Subdistrict Managers. The meeting would be devoted to a discussion of our activities relative to the occurrence of each of these eight accidents and an action plan provided addressing our responsibilities to protect the miners and carry out the mandates of the Act.

## Action Plan

It is the intent of this action plan to propose that a National policy be established on procedures for approval of roof control and ventilation system and methane and dust control plans. The National office should:

1. Where necessary, review and rewrite policies for approval of plans.
2. Develop flow charts that would be used for approval of plans in all Districts.
3. Emphasize the Department of Labor Delegation of Authority and, by policy, require District Managers to approve all plans by actually signing the letters of approval. Where a delegate of the District Manager signs a letter of approval in his absence, a copy of the delegation should be made a part of the approved plan on file in the office.
4. Issue a policy memorandum on the duty of Coal Mine Safety and Health personnel to follow established National policies, instructions, guidelines, interpretations, etc.
5. Implement a system to ensure that when established policies are received, an acknowledgement of such receipt be made. Where

action is required to implement the policy, a plan of action should be prepared and submitted with the acknowledgement.

6. For each District, develop a ratio of specialists to the number of underground inspectors or to the number of underground mines that will be assigned to roof control and ventilation.

7. Determine, on a District-by-District basis, the location within the District where roof control and ventilation specialists will be assigned in order to be more effective, considering the location of the mines to be serviced.

8. Training of the inspectorate was addressed in my memorandum of June 21, 1982, Subject: Training.

cc: H. H. Potter
MSHA Files, Rm 737A, Code 6012--Fatalities

Mr. POTTER. As those memos were received by me, I would sign them or initial them, and I would forward each individual memorandum to the administrator. Then in 1982, I did summarize about 16 fatalities, yes, sir.

The CHAIRMAN. And who was Mr. Lamonica?

Mr. POTTER. He was the administrator of the Coal Mine Health and Safety at that time.

The CHAIRMAN. Now, I have a memo here that I believe you wrote. It says: to Joseph Lamonica from Herschel Potter.

You mention in there, "In eight accidents"—and you list the accidents—"it was evident that the representatives from the Coal Mine Safety and Health has not carried out their mandated enforcement responsibilities to the degree that would have ensured the health and safety of the miners or in a manner expected of health and safety professionals."

Does that sound like language that you wrote?

Mr. POTTER. I have a copy of the memo, and that is a correct reading of it.

The CHAIRMAN. Now, you wrote that memo, did you?

Mr. POTTER. Yes, sir.

The CHAIRMAN. So you were basically telling Mr. Lamonica that of the 16 multiple accidents in the preceding 18 months, MSHA's own negligence contributed to half of them, eight out of the 16; is that correct?

Mr. POTTER. That was my opinion based on the memos that had been submitted to me by the investigators.

The CHAIRMAN. And you were also saying there were serious problems with the way inspections were being made and the way that roof control and ventilation plans were being approved. Is that correct?

Mr. POTTER. That is correct.

The CHAIRMAN. And then you made seven specific recommendations, did you?

Mr. POTTER. Yes, sir.

The CHAIRMAN. And you wrote that memoranda. That is correct, is it not?

Mr. POTTER. Yes, sir.

The CHAIRMAN. Now, what response did you receive from Mr. Lamonica?

Mr. POTTER. I received no response.

The CHAIRMAN. Well, were the recommendations ever acted on?

Mr. POTTER. Not to my knowledge.

The CHAIRMAN. Was one of your recommendations that there should be better training of inspectors?

Mr. POTTER. In the memo that you have provided me, Item 8, I talked about training of inspectors, and I said in a separate memorandum. That was at his request, and that memo was dated June 21, 1982.

The CHAIRMAN. And did you receive a reply from that memorandum?

Mr. POTTER. No, sir, I did not.

The CHAIRMAN. And did these internal memos to you concerning MSHA's negligence in the multiple fatalities suddenly stop coming to you some time after that?

Mr. POTTER. Yes, sir.

The CHAIRMAN. Were you told that they would no longer be prepared or furnished to you?

Mr. POTTER. I asked Robert Elam, who worked for me and acted when I was out of town. I came back about the time the Greenwich report was released, and I asked Bob, I said, "I have not gotten a memorandum on the Greenwich explosion." I said, "Incidentally, I have not received one from you from the McClure."

And he said, "Spicer does not want any more of those memorandums written." And I never pursued that any farther.

The CHAIRMAN. So they just stopped coming.

Mr. POTTER. Yes, sir.

The CHAIRMAN. And do you think the negligence of the agency as well as the negligence of the coal companies—if there is negligence—should be a part of the investigation report?

Mr. POTTER. Senator, in making an investigation of an accident, the investigators are trained to determine the root cause of an accident and not to go only to the point where you blame the coal company. I am not saying they should not be, but to the point where you blame the coal company for the accident when your investigation reveals that there are other reasons why the accident occurred. Then I think whatever those reasons are, and whoever it is, that should be made part of the report.

The CHAIRMAN. But as I understand it, those reports that would include both the coal operator's negligence and MSHA's negligence were halted at some time, at least as far as your getting any kind of continued communication about MSHA's own negligence.

Mr. POTTER. Yes, sir. The only report that has been released by the agency that I am familiar with was the Belle Isle explosion in Louisiana in non-coal mines in which the dirty linen of MSHA was discussed.

During the Ferrell investigation, the assistant secretary was Bob Lagather, and he took a very active role in that investigation in following up on what was going on, what was happening. He told me to do an internal investigation, and any dirty laundry that we found was to be made a part of that report. He referenced the Belle Isle report. Then with the change in the administration, Mr. Lagather left. Mr. Music continued with that policy. When he left, there was nothing ever said about putting anything as a result of the Ferrell investigation, into the final report.

The CHAIRMAN. All right. Now, Mr. Componation, did you conduct a survey of the ventilation plan program?

Mr. COMPONATION. Yes.

The CHAIRMAN. Get closer to that microphone now.

Mr. COMPONATION. Yes, I participated in that program.

The CHAIRMAN. First, what is a gassy gob?

Mr. COMPONATION. A gob is an area where the coal has been extracted and it is abandoned and generally it falls in. It is a void in the mining seam where the coal has been extracted.

Again, that is where we come into the bleeder system to protect those areas from having large accumulations of gases and becoming hazardous.

We conducted the audit and found that there were many mines still operating under conditions that existed prior to the 1969 Act.

The CHAIRMAN. And did one of your findings concern the existence of over 150 gassy gobs in sections of mines in all ten districts of the agency that were neither sealed nor ventilated with bleeder systems?

Mr. COMPONATION. I do not recall the exact numbers, but we did find gobs in all ten districts that were not adequately ventilated, may not have had bleeders, or were not sealed.

The CHAIRMAN. And is that a dangerous situation?

Mr. COMPONATION. Yes.

The CHAIRMAN. And did the survey also find that the ventilation plan program was flawed?

Mr. COMPONATION. In many instances, yes.

The CHAIRMAN. Mr. Potter, was this also one of the points raised in your memorandum to Mr. Lamonica?

Mr. POTTER. Yes, sir, it was.

The CHAIRMAN. Mr. Potter, did you and Mr. Componation try to do something about that problem?

Mr. POTTER. The problem of the gobs?

The CHAIRMAN. Yes.

Mr. POTTER. After we completed the ventilation program evaluation, we submitted that to the administrator's office in draft form. We held a meeting with all of the district managers in Louisville, Kentucky. It was in Louisville, Kentucky; I think it was 1983. And we had a map from each district so that each district would know they had at least one mine that had gobs that were not ventilated. And we discussed that for two days.

Then we later had a meeting with the Bituminous Coal Operators Association and the American Mining Congress in which we went over these findings, particularly the unventilated gobs and not sealed, and we met with the National Independent Coal Operators Association, at which time we discussed the problem.

The CHAIRMAN. So you did meet with the district managers; is that correct?

Mr. POTTER. Yes, sir.

The CHAIRMAN. And you alerted the district managers to the problem as far back as 1979, Mr. Componation?

Mr. COMPONATION. Yes. There was a district managers meeting held in Pittsburgh in 1979.

The CHAIRMAN. And did you meet with the industry?

Mr. COMPONATION. Not in 1979. As part of the meeting with the district managers, we prepared what we called a "white paper" outlining our proposals for the development of bleeders and ventilation of gobs. And that was explained, and a copy was then sent to all the district managers for comments.

The CHAIRMAN. Was anything done about it?

Mr. COMPONATION. Not to my knowledge.

The CHAIRMAN. Mr. Potter, to your knowledge?

Mr. POTTER. Not to my knowledge.

The CHAIRMAN. And have there been, Mr. Potter, a number of mine disasters that occurred because of the problem?

Mr. POTTER. Of unventilated gobs?

The CHAIRMAN. Yes.

Mr. POTTER. As Mr. Componation said earlier, Consol No. 9, 78 fatalities in 1968. We had Greenwich which was in failure of having an effective bleeder system. Grundy, 13 men, an ineffective bleeder system. Those are the ones that come to mind right at the moment.

Mr. McATEER. Senator Kennedy, we had asked for a copy of that report on ventilation, and as of 3/6/87, the agency's response was that the findings of the report have not been adopted as official agency position. The agency does not dispute the dangers but simply said it has not been adopted as official agency position.

The CHAIRMAN. You mentioned, Mr. Componation, about the Grundy mine explosion. Did you investigate that?

Mr. COMPONATION. I was on the investigating committee, yes.

The CHAIRMAN. And what did you find were the principal causes of the explosion?

Mr. COMPONATION. Primarily, as Mr. Potter stated before, when we make an investigation, we go back clear to root causes.

The CHAIRMAN. Right.

Mr. COMPONATION. And one of the prime causes that we found was the inadequate ventilation of a gob due to the lack of bleeders. Also, a smoking program was not enforced, and the men were carrying smoking articles and cigarette lighters underground.

The CHAIRMAN. And had the ventilation plan been approved?

Mr. COMPONATION. Yes.

The CHAIRMAN. From the results of the investigation, should the ventilation plan have been approved?

Mr. COMPONATION. In my opinion, the ventilation plan should not have been approved with the type of gob and the area that was included.

The CHAIRMAN. What do you think, Mr. Potter?

Mr. POTTER. I agree with those findings.

The CHAIRMAN. Do you know who approved the ventilation plan? Was it the district manager?

Mr. COMPONATION. The district manager has a responsibility for the approval.

The CHAIRMAN. And who was that, do you remember?

Mr. COMPONATION. Jerry Spicer was the district manager at the time.

The CHAIRMAN. And what is Mr. Spicer's position now?

Mr. COMPONATION. He is now, as I understand, the administrator for coal.

The CHAIRMAN. The administrator of health and safety for all coal mines?

Mr. COMPONATION. Yes.

The CHAIRMAN. Mr. Componation, did your investigation of the Grundy disaster indicate deficiencies on the part of the agency's inspections?

Mr. COMPONATION. I sometimes hesitate to refer to things as deficiencies, because I feel that many inspectors do the best job they know how. But the problem I have is that many inspectors do not receive the training and the supervision that is required which results, a lot of times, in deficiencies that we find. But there were deficiencies in the inspection process.

The CHAIRMAN. Well, did you inform Mr. Potter of some of these in an internal memo?

Mr. Componation. Yes. I wrote a memo to Mr. Potter outlining some of the deficiencies that I felt needed attention.

The Chairman. We will make the memo a part of the record.

[The memo referred to follows:]

**U. S. Department of Labor**

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

APR 22 1982

MEMORANDUM FOR: HERSCHEL H. POTTER HP
Chief, Division of Safety

FROM: WILLIAM A. HOLGATE W A Holgate
Mine Safety and Health Specialist

PAUL J. COMPONATION Paul J Componation
Mine Safety and Health Specialist

SUBJECT: Investigation Into the Cause of the Disaster, No. 21 Mine, Grundy Mining Company, Incorporated

During an investigation into the cause of a disaster, many of the investigators are specialists such as ventilation specialists or electrical inspectors who, because of training, are able to more closely scrutinize the mining systems, plans, and equipment. It is recognized that such investigators may often find conditions or violations not apparent to the average coal mine inspector. However, during the investigation into the cause of the accident at the No. 21 Mine, several violations and conditions were observed that should have been apparent to inspection personnel during routine inspections at the mine. This indicates a need for improvement in enforcement practices or training. Following is a list of such conditions:

1. A record of a preshift examination for the 11 p.m. to 7 a.m. shift on December 7, 1981, was not entered in the preshift examiner's record book. According to testimony of a section foreman, he does not make a preshift examination for the maintenance shift. A mechanic on the 11 p.m. to 3 p.m. shift stated the examination is often made after they have entered the section and started work.

2. Blocks of coal left around an extensive pillared area to protect an outside entry are being accepted as an equivalent bleeder system. The "paper bleeders," as they were referred to by an MSHA supervisor, admittedly, could not be traveled. There was no way to evaluate the bleeders; location for evaluation points to determine effectiveness of the system were inaccessible. As was indicated at the No. 21 Mine, the bleeders were ineffective.

3. Inspectors are not traveling bleeders or evaluating their effectiveness during some inspections.

4. Sixty-two percent of the dust samples collected during the investigation, in areas not affected by the explosion, were substandard.

5. Cables were not marked or were improperly marked at the power center.

6. Explosives and detonators were improperly stored on the section and transported in face areas in original containers on face equipment.

7. The smoking prohibitation program was lax. Cigarettes and lighters were found on bodies of four of the victims, including a supervisor. Cigarettes, as many as two packs were found in the victims' lunch boxes. Employees stated smoking underground was common. According to records in the book provided for that purpose, the last search for smoking articles prior to December 8, 1981, was October 12, 1981.

A regular inspection requiring 12 shifts and two inspectors was completed October 30, 1981.

The CHAIRMAN. Let me read a section of it. This is from you and Mr. Hogate to Mr. Potter.

"Several violations and conditions were observed that should have been apparent to inspection personnel during the routine inspections of the mine. This indicates a need for improvement in enforcement practices or training. Following is a list of the conditions," and then there is Paragraph 2, "At No. 21 mine, the bleeders were ineffective."

Were you told that Mr. Lamonica wanted that memoranda destroyed?

Mr. COMPONATION. I wrote the memo to Mr. Potter. I gave it to Mr. Potter. A couple days later, the memo was on my desk, and I do not recall who informed me because oftentimes Mr. Potter is out and there are people acting. But I was told that Mr. Lamonica did not want the memo, and he wanted all copies of the memos destroyed.

The CHAIRMAN. Did you destroy it?

Mr. COMPONATION. Not at the time, no.

The CHAIRMAN. Well, did Mr. Spicer subsequently downgrade the defective bleeder order?

Mr. COMPONATION. I was later informed that some of the orders were changed. I was not a party to the——

The CHAIRMAN. Were you consulted?

Mr. COMPONATION. No. I did not know until after the occurrence had happened. I was told some time later, when the penalties were assessed and the fines paid, that the orders had been downgraded to citations.

The CHAIRMAN. Were you aware it was being done?

Mr. COMPONATION. No. I knew nothing about it.

The CHAIRMAN. Did you write a memo to Mr. Lamonica recommending that the Grundy mine remain closed until the ventilation survey could be conducted?

Mr. COMPONATION. That was immediately after the investigation, yes.

The CHAIRMAN. And did the mine reopen without such a survey being conducted?

Mr. COMPONATION. To my knowledge, there never was a survey conducted prior to opening of the mine.

The CHAIRMAN. Mr. Potter, did the safety division stop conducting the multiple fatality investigations after having done so as a matter of policy since 1980?

Mr. POTTER. I am not sure of the date, but there was five men killed at the Loveridge Mine at Consol on the surface. That investigation was conducted by people other than in Division of Safety, and I was informed by Mr. Spicer that Mr. Lamonica had made that decision. And as far as I know, the Division of Safety has not conducted a multiple fatalities investigation since.

The CHAIRMAN. Do you know when that happened?

Mr. POTTER. I do not know when. I think Loveridge must have been in the spring of 1986. But whenever that accident happened, that is when it was.

The CHAIRMAN. Was there anything in writing changing that policy?

Mr. POTTER. No, sir. Not at the time I retired from the agency, there had been nothing put in writing.

The CHAIRMAN. Did the safety division personnel still participate in these investigations?

Mr. POTTER. In the beginning, well, when the division no longer conducted the investigation, there was a person from the Division of Safety that participated, but I am not so sure that is, in fact, true now.

The CHAIRMAN. But they no longer controlled it, did they?

Mr. POTTER. No, sir. They no longer controlled the investigations.

The CHAIRMAN. Now, here is the latest report we have on the multiple fatality investigation. It was last year. Did anyone from the safety division ever participate in that?

[The report referred to follows:]

COPY

51

UNITED STATES
DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

District 4

# REPORT OF INVESTIGATION
(SURFACE COAL MINE)

## MULTIPLE FATAL EXPLOSIVES ACCIDENT

Twenty-Mile Surface #901 (ID No. 46-06870)
High Power Energy
Drennen, Nicholas County, West Virginia

June 28, 1986

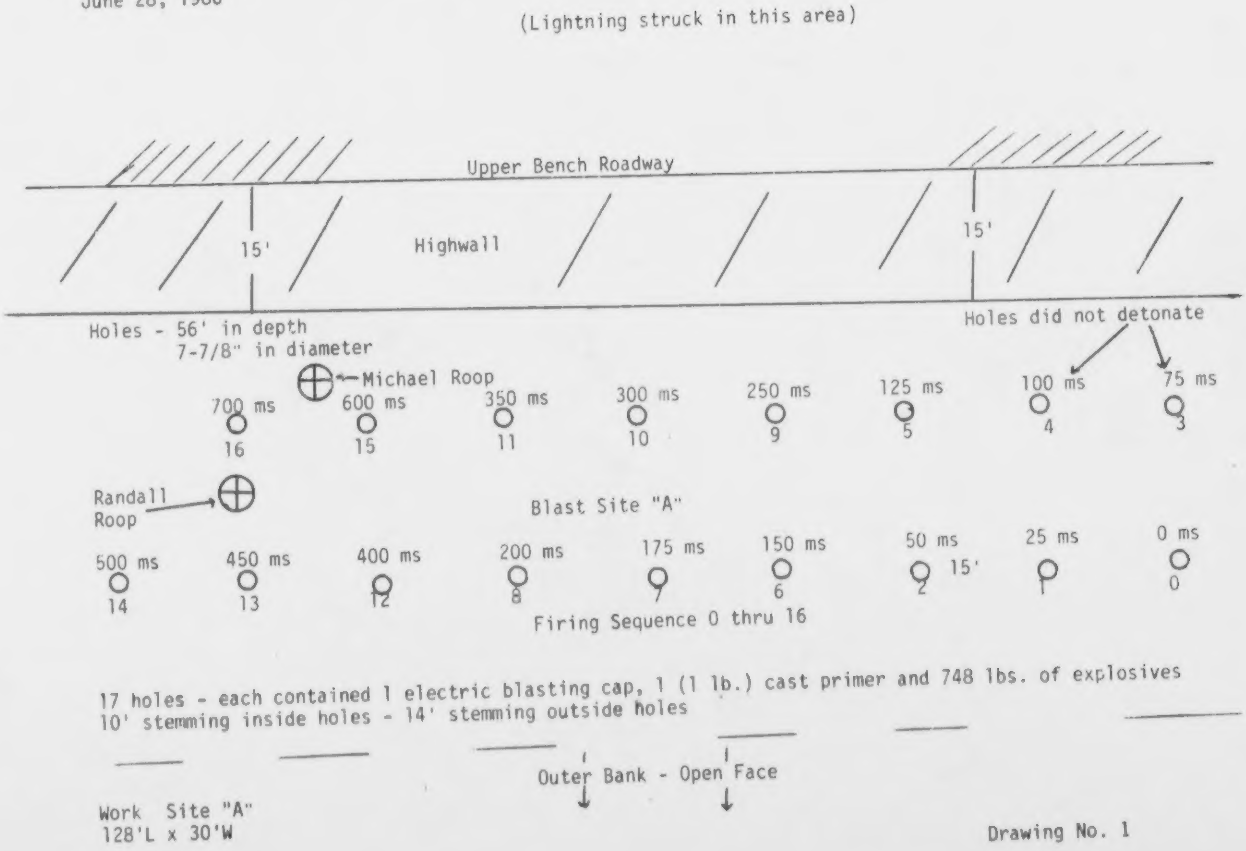
by

Ray T. Saunders
Coal Mine Safety and Health Inspector

Originating Office - Mine Safety and Health Administration
P. O. Box 112, Mount Hope, West Virginia 25880
J. M. Krese, District Manager

Multiple Fatal Explosives Accident
Twenty-Mile Surface #901
High Power Energy
June 28, 1986

Drawing Not Scaled
Approximate Location
of Victims


(Lightning struck in this area)
Upper Bench Roadway
Highwall
15'
15'
Holes - 56' in depth
7-7/8" in diameter
Holes did not detonate
Michael Roop
Randall Roop
700 ms
16
600 ms
15
350 ms
11
300 ms
10
250 ms
9
125 ms
5
100 ms
4
75 ms
3
Blast Site "A"
500 ms
14
450 ms
13
400 ms
12
200 ms
8
175 ms
7
150 ms
6
50 ms
2
15'
25 ms
1
0 ms
0
Firing Sequence 0 thru 16
Outer Bank - Open Face
Work Site "A"
128'L x 30'W

17 holes - each contained 1 electric blasting cap, 1 (1 lb.) cast primer and 748 lbs. of explosives
10' stemming inside holes - 14' stemming outside holes

Drawing No. 1

Abstract of Investigation

**U.S. Department of Labor**
Mine Safety and Health Administration

*Authority*—This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164

**Section A—Identification Data**

1. Title of investigation: Multiple Fatal Explosives Accident
2. Date MSHA investigation started: June 28, 1986
3. Report release date: August 1, 1986
4. Mine: Twenty-Mile Surface #901
5. Mine ID number: 46-06870
6. Company: High Power Energy
7. Town, County, State: Drennen, Nicholas County, WV
8. Author(s): Ray T. Saunders

**Section B—Mine Information**

9. Daily production:
10. Surface employment: 78
11. Underground employment: 0
12. Name of coalbed:
13. Thickness of coalbed:

**Section C—Last Quarter Injury Frequency Rate (HSAC) for:**

14. Industry: 6.48
15. This operation: 5.74
16. Training program approved: Yes
17. Mine Profile Rating: Not currently rated

**Section D—Originating Office**

18. Mine Safety and Health Administration Coal Mine Health and Safety District No. 4
Address: POB 112
Mt. Hope, WV 25880

**Section E—Abstract**

On Saturday, June 28, 1986, at 1:15 p.m., an unintentional detonation of explosives accident occurred at the work site "A", resulting in the death of Randall G. Roop, shooter, and Michael E. Roop, general laborer. Both miners were experienced in the handling and use of explosives. Seventeen holes had been charged for blasting when an electrical storm arrived in the area. The blasting crew had withdrawn to an area away from the blast site for the purpose of detonating the charged holes. When the wiring circuitry was tested, an open circuit was detected and the victims returned to the blast site. As the miners were checking the wiring circuitry, lightning struck the ground in the vicinity of the blast site and 15 of the 17 loaded holes detonated. The victims disappeared under the blasted material. The resultant fatalities occurred when the victims, who knew an electrical storm was present in the area, failed to comply with known company policy and federal regulations which require all persons to be withdrawn to a safe location away from the blast area during an electrical storm.

**Section F—Mine Organization**

| Company officials | Name | Address |
|---|---|---|
| Executive Vice<br>19. President | Fred Lawson | 1661 W. Henderson Road<br>Columbus, OH 43220 |
| 20. Superintendent | Norman Hall | POB 74<br>Drennen, WV 26667 |
| 21. Safety Director | Mark Potnick | POB 20911<br>Columbus, OH 43220 |
| 22. Principle officer—H&S | Norman Hall | POB 74<br>Drennen, WV 26667 |
| 23. Labor Organization | UMWA, District 31 | 310 Gaston Ave.<br>Fairmont, WV 26554 |
| 24. Chairman—H&S Committee | Ray Bragg | POB 86<br>Coal City, WV 25823 |

MSHA Form 2000-57, Apr 82 (revised)

## Commentary

On Saturday, June 28, 1986, at about 7 a.m., the day shift blasting crew reported to work at the Twenty-Mile Surface #901 mine. The crew (Randall Roop, shooter; Michael Roop, general laborer; Lee Horrocks, powder man; and Chilton Holcomb, powder man), under the supervision of Billy Collins, blasting foreman, proceeded to work site "A" where they prepared (loaded and charged) five holes and detonated them without incident. The crew then proceeded to work site "S-1" and prepared the next shot. The blasting crew loaded, charged, and detonated 20 holes. Collins instructed the crew to return to work site "A" where the next set of holes was being drilled. Collins left the crew at this time and traveled to the mine office.

The blasting crew arrived at work site "A" at about 11:30 a.m. Gary Collins, driller, was still in the process of drilling holes. Collins stated that he finished drilling the last hole at about 12:30 p.m., and pulled the drill away from the area. The blasting crew finished loading the 17 holes and Holcomb drove the explosives truck away from the blast site. Horrocks, Randall Roop, and Michael Roop began to wire up the 17 loaded holes. According to Gary Collins and Billy Collins, who had just returned to the area, a storm could be heard and seen in the distance as the Roops and Horrocks were extending the lead wires up the roadway away from the blast site. Horrocks added that he saw a flash of lightning as he and the Roops were extending the lead wires away from the blast site. Randall and Michael Roop, Horrocks, and Gary Collins proceeded away from the blast site to a wooded area adjacent to the site in preparation of detonating the blast. Billy Collins, blasting foreman, stated that Randall Roop told him the blast site was ready to detonate. Collins left the area and traveled to the opposite end of the blast site where he alerted Holcomb and Lowell Swallin, driller, that the blast was ready to be detonated. Collins blew the siren on his truck to signal the area was clear for blasting. Collins added that a rain and hail storm started in the area at this time.

According to Horrocks and Gary Collins, the rain and hail storm entered the area just as Randall Roop was preparing to check the continuity of the circuitry. Horrocks stated that he, Gary Collins, and Michael Roop got in the blasting crew's equipment truck out of the rain. Randall Roop remained outside the truck and, according to Horrocks, used a galvanometer to check the wiring circuit. Horrocks added that Randall Roop opened the truck door and told the crew that the circuit was bad (open). Horrocks told Randall Roop to get in the truck and wait out the storm. Horrocks and Gary Collins stated that Randall Roop started back to the blast site and Michael Roop got two raincoats from the truck and went back with Randall.

Billy Collins, sensing something was wrong because of the time that had elapsed and the area had not been blasted, began slowly backing his truck toward the blast area. As Collins rounded a curve he saw the victims walking down the roadway leading to the blast area. Collins was not close enough to yell at the victims to get off the blast area so he continued backing his truck toward the site. Collins had proceeded about 150 feet when lightning struck the ground near his truck and 15 of the 17 charged holes detonated.

Randall and Michael Roop were covered and crushed by the blasted material. The accident occurred at 1:15 p.m. Mine management, along with contract employees, local rescue squads, and state and federal agencies, began immediate search and recovery operations. The victims were recovered on Sunday afternoon, June 29, 1986, transported to the hospital where they were pronounced dead-on-arrival.

## Discussion and Evaluation

1. Work site "A" was located on the second bench level of the steep ridge line being mined. The blasting site was 128 feet long and 30 feet wide. The 17 holes were 7-7/8 inches in diameter and drilled 56 feet deep. Each hole was loaded with approximately 748 pounds of ANFO, a 1-pound cast primer, and an electric blasting cap. Approximately 11,235 pounds of explosives were used to charge the 17 holes. The wiring in series was done by Randall Roop, Michael Roop, and Lee Horrocks, all experienced and qualified blasters. The circuit, when tested with a galvanometer by Randall Roop, was found to be open. Normally this test is made prior to hooking the blasting cable to the circuit but according to Horrocks, they did not follow that procedure on this blast.

2. Statements during the interviewing session revealed that the weather during the morning hours of June 28, 1986, was hot and humid with clear skies. At about 12.30 p.m., storm clouds were observed some distance from the blasting area by Gary Collins, Lowell Swallin, Chilton Holcomb, Lee Horrocks, and Billy Collins. Gary Collins stated hearing thunder and Lee Horrocks stated he saw a flash of lightning as the blasting cable was being extended, but there was no reason for alarm in that everyone was leaving the blasting site.

All five miners interviewed stated that they had been instructed to leave their equipment and to leave charged holes and proceed to a safe area when electrical storms are approaching. Horrocks and Billy Collins indicated that Randall and Michael Roop were experienced in blasting and aware of the procedure of withdrawing from a blast site. Training and personal records of the victims indicated they were well experienced in blasting work and were qualified to perform the work being done.

3. Horrocks instructed Randall Roop to wait out the storm before returning to the blast site. Billy Collins stated that he was moving towards the two miners to tell them to get off the site until the storm passed just prior to the detonation. It was also revealed that storms of this nature were inherent to this area and that earlier in the year, lightning had struck an endloader on a nearby work site.

4. According to those interviewed, the lightning struck the ground on the hillside above the blast site but no visual evidence was observed that would indicate exactly where the lightning struck the ground.

## Findings of Fact

Two miners (blasters) proceeded to reenter a charged area of 17 loaded holes after an electrical storm had approached the blast site. Lightning struck the ground in the area causing a premature ignition of the explosives. The two miners were fatally injured. A 104(a) citation for a violation of Section 77.1303(uu) was issued.

## Conclusion

The accident occurred when lightning struck the ground near the blast site causing 15 of the 17 charged holes to detonate. The resultant fatalities occurred when the victims who knew an electrical storm was present failed to comply with known company policy and federal regulations which require all persons to be withdrawn to a safe location away from the blast area during an electrical storm.

Ray T. Saunders
Ray T. Saunders

Approved by.

James W. Rutherford
Subdistrict Manager

Jesse Cole
for District Manager

# APPENDIX

An investigation was conducted by the Mine Safety and Health Administration and those participating were as follows:

## High Power Energy Officials

| | |
|---|---|
| Fred Lawson | Executive Vice President |
| Charles Keith | Vice President/General Counsel |
| Mark Potnick | Safety Director |
| Norman Hall | Mine Superintendent |
| Billy Collins | Blasting Foreman |

## High Power Energy Employees

| | |
|---|---|
| Lee Horrocks | Powder Man |
| Lowell Swallin | Highwall Drill Operator |
| Chilton Holcomb | Powder Man/Truck Driver |
| Gary Collins | Highwall Drill Operator |

## Representatives of Miners
## United Mine Workers of America

| | |
|---|---|
| William Hamrick | International Safety Representative |
| Terry Osborne | International Safety Representative |
| Gary Asher | International Safety Representative |
| Dowell Johnson | District 31, Executive Board Members |
| Ray Bragg | President, Local 8531 |
| Roy A. Ball | Mine Safety Committeeman |
| Ken Shiflet | Mine Safety Committeeman |

## U. S. Department of Interior
## Office of Surface Mining

| | |
|---|---|
| Don Steck | Reclamation Inspector |

## WV Department of Energy
## Division of Mining and Minerals

| | |
|---|---|
| John Lucas | Surface Mine Inspector |
| Ronald Sheets | Surface Mine Inspector |

## Mine Safety and Health Administation

| | |
|---|---|
| J. M. Krese | District Manager |
| James W. Rutherford | Subdistrict Manager |
| Leighton C. Farley, Jr. | Mine Safety and Health Specialist |
| Homer S. Grose | Supervisory Coal Mine Safety and Health Inspector |
| Thomas J. Dickerson | Coal Mine Safety and Health Inspector |
| Johnnie G. Tyler | Coal Mine Safety and Health Inspector |
| Ray T. Saunders | Coal Mine Safety and Health Inspector |

Data Sheet

**U.S. Department of Labor**
Mine Safety and Health Administration

**Section A—Victim Data**

1. Name: Randall G. Roop
2. Sex: ☒ Male ☐ Female
3. Social Security Number: 234-80-7993
4. Age: 35
5. Job Classification: Shooter
6. Experience at this Classification: 6½ yrs surface mining; experienced blaster
7. Total Mining Experience: 6½ yrs
8. What activity was being performed at time of accident? Checking wiring circuitry at blast site
9. Victim's Experience at this Activity: 6½ yrs
10. Was victim trained in this task? Yes

| Section B—Victim Data for Health and Safety Courses/Training Received *(related to accident)* | Date Received |
|---|---|
| 11. Newly Employed Experienced | 7/19/85 |
| 12. Annual Refresher (Surface) | 8/12/85 |
| 13. Task Training - Powder Man and Drill Operator | 7/19/85 |
| 14. | |

**Section C—Supervisor Data** *(supervisor of victim)*

15. Name: Bill Collins
16. Certified: ☒ Yes ☐ No
17. Experience as Supervisor: 10 yrs
18. Total Mining Experience: 20 yrs

| Section D—Supervisor Data for Health and Safety Courses/Training Received *(related to accident)* | Date Received |
|---|---|
| 19. Annual Refresher (Surface) | 8/12/85 |
| 20. | |
| 21. | |
| 22. | |

23. When was the supervisor last present at accident scene prior to the accident? About 1:05 p.m.
24. What did he do when he was there? Discussed blast with victims; everyone was off the blast site at this time.
25. When was he last in contact with the victim? About 1:05 p.m.
26. Did he issue instructions relative to the accident? Told crew all was clear and to put off shot when they heard his siren signal
27. Was he aware of or did he express an awareness of any unsafe practice or condition? No

MSHA Form 2000-58, June 83 (Revised)

Data Sheet

U.S. Department of Labor
Mine Safety and Health Administration

**Section A – Victim Data**

1. Name: Michael E. Roop

2. Sex: ☒ Male ☐ Female

3. Social Security Number: 233-78-5800

4. Age: 39

5. Job Classification: General laborer

6. Experience at this Classification: 2½ yrs surface mining; experienced blaster

7. Total Mining Experience: 2½ yrs

8. What activity was being performed at time of accident? Checking wiring circuit at blast site

9. Victim's Experience at this Activity: 2½ yrs

10. Was victim trained in this task? Yes

**Section B – Victim Data for Health and Safety Courses/Training Received** *(related to accident)*

| | Date Received |
|---|---|
| 11. Newly Employed Experienced | 6/10/86 |
| 12. Hazard Training | 6/18/86 |
| 13. | |
| 14. | |

**Section C – Supervisor Data** *(supervisor of victim)*

15. Name: Bill Collins

16. Certified: ☒ Yes ☐ No

17. Experience as Supervisor: 10 yrs

18. Total Mining Experience: 20 yrs

**Section D – Supervisor Data for Health and Safety Courses/Training Received** *(related to accident)*

| | Date Received |
|---|---|
| 19. Annual Refresher (Surface) | 8/12/85 |
| 20. | |
| 21. | |
| 22. | |

23. When was the supervisor last present at accident scene prior to the accident? About 1:05 p.m.

24. What did he do when he was there? Discussed blast with victims, everyone was off the blast site at this time.

25. When was he last in contact with the victim? About 1:05 p.m.

26. Did he issue instructions relative to the accident? Told crew all was clear and to put off shot when they heard his siren signal.

27. Was he aware of or did he express an awareness of any unsafe practice or condition? No

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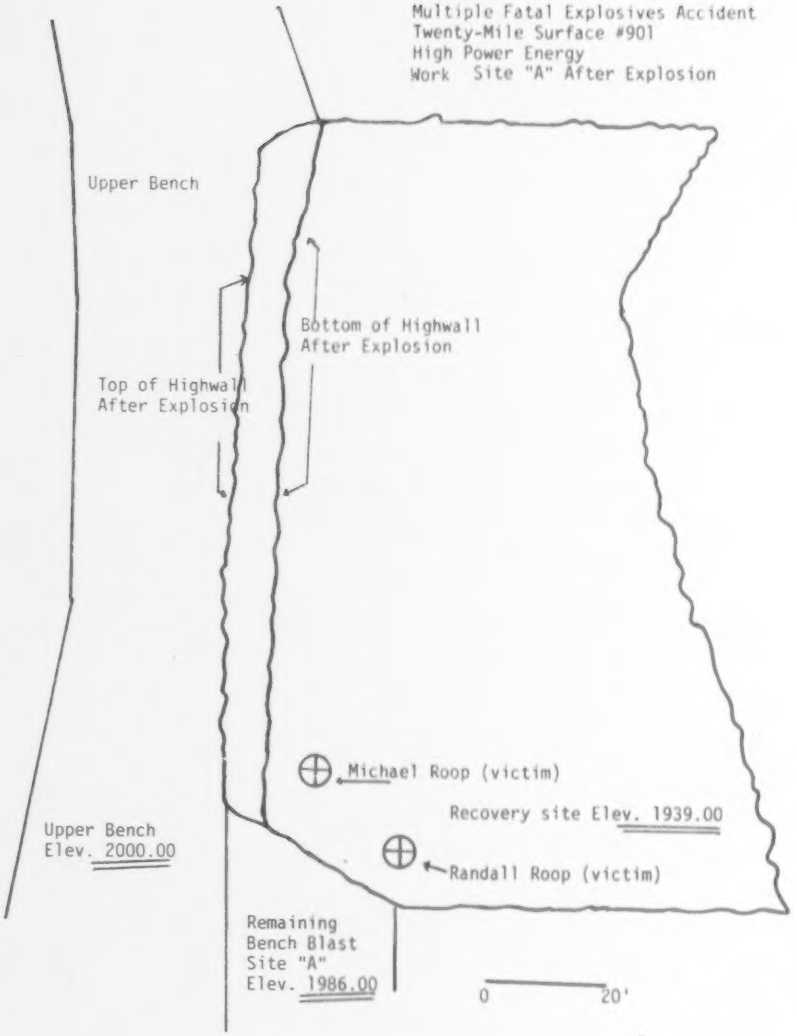
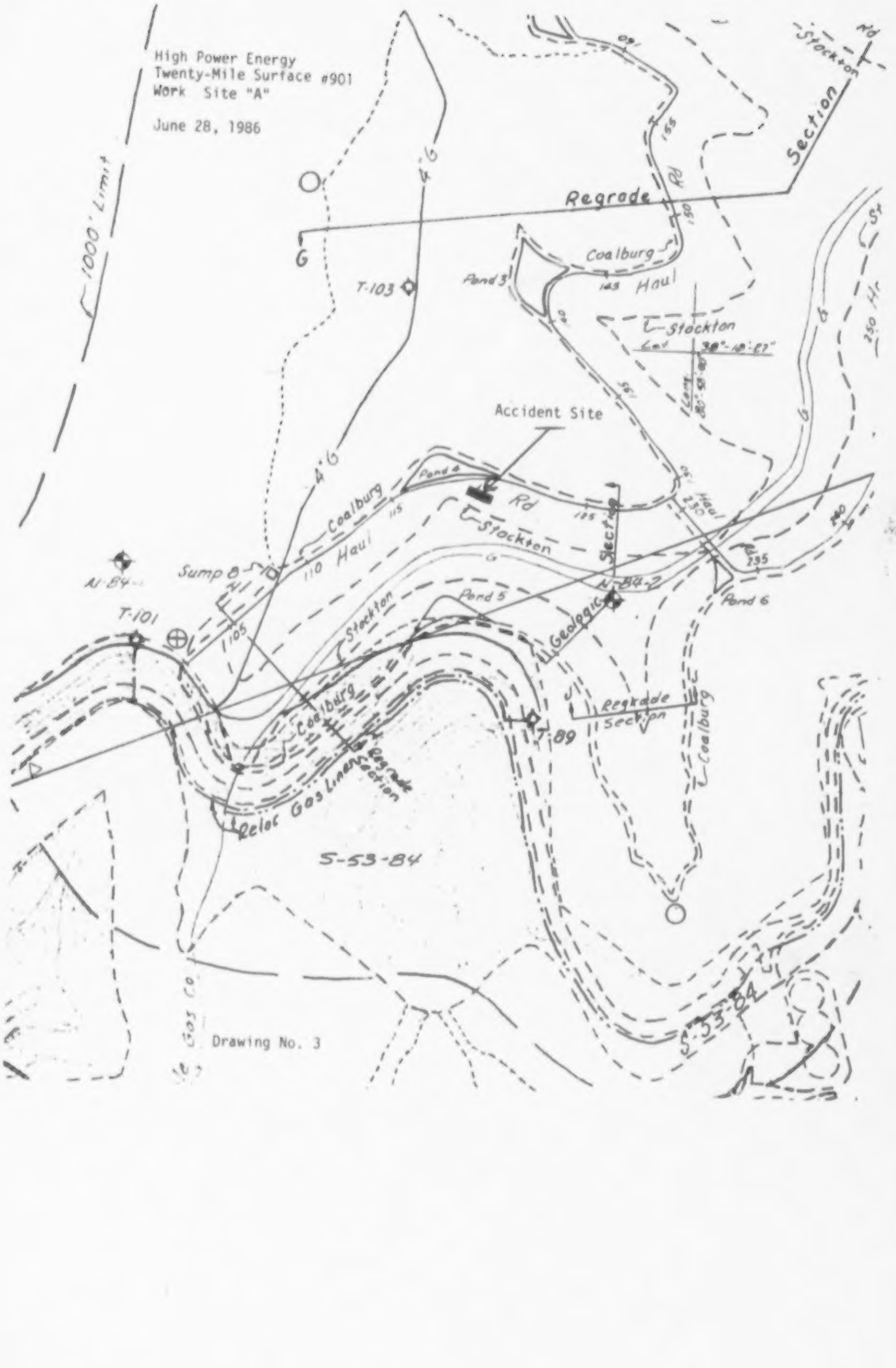


Multiple Fatal Explosives Accident
Twenty-Mile Surface #901
High Power Energy
Work Site "A" After Explosion

Upper Bench
Bottom of Highwall After Explosion
Top of Highwall After Explosion
Michael Roop (victim)
Recovery site Elev. 1939.00
Upper Bench Elev. 2000.00
Randall Roop (victim)
Remaining Bench Blast Site "A" Elev. 1986.00
0
20'

Drawing No. 2



High Power Energy
Twenty-Mile Surface #901
Work Site "A"

June 28, 1986

1000' Limit
Regrade
Section
Stockton Rd
Rd
Coalburg
Haul
Pond 3
T-103
G
4 G
Stockton
Accident Site
Pond 4
Coalburg
Haul
Rd
Stockton
Geologic Section
N-84-2
Pond 5
Pond 6
Sump 8
N-84
T-101
Stockton
Coalburg
Reloc Gas Line
Regrade Section
Regrade Section
T-89
Coalburg
S-53-84
S-53-84
Gas Co.

Drawing No. 3

Mr. POTTER. I have just been handed a copy. Let me just take a quick look at the list of people.

[Pause.]

Mr. POTTER. No one from the safety division participated in that investigation, according to this list of people.

The CHAIRMAN. So are we now back to a policy which basically the GAO objected to in the 1970s where the people who might have contributed to the accidents are actually investigating them?

Mr. POTTER. It appears to be that way, yes, sir.

The CHAIRMAN. Do you think that is an acceptable policy?

Mr. POTTER. No, sir. I think those investigations should be conducted from the national office, at the very least.

The CHAIRMAN. And, Mr. Potter, is it your conclusion that mine safety enforcement has been going downhill?

Mr. POTTER. That is my perception. Yes, sir.

The CHAIRMAN. And would you agree, Mr. Componation?

Mr. COMPONATION. Yes.

The CHAIRMAN. Mr. Potter, what do you think would be the best way to conduct these investigations? Should the system include all fatalities and should criminal investigations be a part of that?

Mr. POTTER. I think the clean way of conducting investigations, based on my experience since 1980, and the action taken by the agency once they have been told of deficiencies in the agency itself, is to give all the authority that the Secretary now has in Section 103(a) and (b) and Section 105 on discrimination investigations and Section 110 on criminal, and move it to a separate entity; and let those investigations be conducted by someone who does not have a conflict of interest.

A good example of that is the National Transportation Safety Board.

The CHAIRMAN. And do you think that would be a good prototype to follow as a guide?

Mr. POTTER. Yes, sir.

The CHAIRMAN. Well, I think that your responses have been enormously helpful. We have seen that experts with a lifetime in the service of MSHA and a lifetime of experience and knowledge about mine safety worked conscientiously to develop a whole series of recommendations for vital safety regulations. And we have seen the industry's recommendations for safety regulations submitted through the public hearing process on MSHA's safety regulations. And in instance after instance after instance, we find out that MSHA's final safety regulations conform with the industry recommendations lock, stock, and barrel. There is no other conclusion but that those regulations provide less safety. And the law is very clear about the intention of Congress—that MSHA should put the health, safety, and well-being of mine workers first before any other considerations.

Then, we find that when career individuals try to upgrade safety provisions within the Agency, their recommendations are sidetracked because they step on someone's toes. And we find that the recommendations of the GAO have been absolutely overridden, without the consultation of career individuals who have long been committed to the safety and well-being of America's miners.

I consider this malfeasance. It is not just non-feasance, it is malfeasance when our coal mines are less safe today than they were before. That is absolutely intolerable. I think that we are going to hear some additional testimony that will support the statements of Mr. Potter, Mr. Componation, and Mr. McAteer as we move on through the course of our hearing.

I would yield now to my colleagues for questions. This is a highly technical subject, but you do not need to be a technician to understand what has been going on.

I would yield now to my colleague, Senator Hatch.

Senator HATCH. Thank you so much, Senator Kennedy. I want to compliment you for holding these hearings, and welcome you gentlemen to the hearing room.

Let us face it. MSHA is an agency in trouble. It has not been an effective enforcement agency, and while there are many good employees at the agency, there has been a pattern or practice, it seems to me, of mismanagement mistakes; and in some cases, I think you can even point to serious misconduct.

I believe the Chairman will do this, but I believe the hearing should not just focus on what is wrong with the agency. One can make public attacks on an agency like MSHA's, as I think you can on almost any agency, for faults that exist. That is not difficult to do.

What is difficult, it seems to me, and what is more important is to come up with ways of making the agency better. How do we come up with suggestions that might expedite better procedures and better safety approaches?

I think it would help to hear how the adoption of safety standards can be expedited, how respirators, for instance, can be made more effective, how accident reports can be completed in a more timely fashion, how miners can be better trained to furnish more safety for themselves and how the agency itself can better enforce the law.

I do think that Secretary Brock's appointment of Allen McMillan as an acting Assistant Secretary of Labor for MSHA is a welcome first step. I believe Mr. McMillan has already made several improvements such as reinstituting the old referral procedures for criminal violations of the Mine Act which had been changed by a former head of the agency.

These are some of the issues that I am concerned about, but let me ask a few questions. Mr. McAteer, as I understand it, you feel that MSHA simply cannot both regulate and competently investigate accidents. You feel that the only solution is to create a new National Mining Safety Board.

Now, are you saying that MSHA has demonstrated an inherent structural inability to perform both the functions of regulation and accident investigation?

Mr. McATEER. Senator Hatch, I am not one who wants to go off and start new federal agencies at the drop of a hat, so we have thought long and hard about this question. The General Accounting Office, back in 1970, identified a conflict that is inherent in the system, and that conflict is that if the agency itself has responsibility to do investigations and has responsibility to involve itself in the plan and operation of the mine by approval of these plans, and then goes and conducts its own investigations after accidents, there is a great potential for conflict.

There was an effort in 1980 made to separate those two out, to say that you would not have the inspector who made an inspection and, for example, may have failed to see the problem, going back in two days later to investigate a fatal accident.

So the GAO suggested, take all fatal accidents and investigate them from the national office, but the agency said, well, that would be too expensive and difficult. So what we will do is we will do the multiple fatal accidents, and we will take those and send somebody from the national office down and make those the national review. So you would not have the same person doing two jobs.

Senator HATCH. So you seem to be saying that there is an inherent structural inability to perform both these functions, as you view it?

Mr. MCATEER. Well, they did that for a number of years. They did not make the corrections even when they found the problems, and they stopped doing it in early 1986 because the bad news was, in fact, coming back.

Senator HATCH. Okay. Mr. Potter, you are a veteran of many MSHA investigations, including many successful ones, as I view it. Do you share Mr. McAteer's view that MSHA is inherently unable to both regulate the industry and to investigate accidents?

Mr. POTTER. Regretfully, I have to say I share that view.

Senator HATCH. You share that view. Well, if you do, then do you favor his proposal that we establish a new National Mining Safety Board?

Mr. POTTER. I am not making a recommendation of a specific board. I am just saying that the authority to conduct investigations should be removed from the agency to some other entity.

Senator HATCH. All right. Now, Mr. McAteer, I understand that some companies are requiring their employees to undergo what is called hands-on training with respirators in underground coal mines.

Now, this means that they actually put on the self-rescuing devices to make sure that they know how to use them if an underground fire occurs.

Would it provide a significant improvement in mine safety is MSHA required such hands-on training nationwide?

Mr. MCATEER. Senator Hatch, two things. One, after the Wilburg disaster, a determination was made by the rescuers that a number of the victims had a number of the self-rescuers beside them, and the guess is that they were not properly being applied.

You see, you get one training program for the rescuer and that may happen five years ago, and then all of a sudden one day you are asked to put a respirator on and make it work under a panic situation. So that growing out of Wilburg and growing out of the need for that continual kind of training, I am aware that a number of companies have begun a process to try to, in fact, institute this hands-on kind of training.

Senator HATCH. And you think it is a good thing. Would that be something that you think MSHA should require of all companies?

Mr. MCATEER. Yes, sir, Senator Hatch. I think that it leads to the broader question of hands-on training for new employees and hands-on training for older employees when they move to a new section and new problem.

Our training programs in this country have not emphasized that kind of training and have not emphasized a good, strong, repetitious training program.

Senator HATCH. Okay. As I see it, we have heard how efforts to upgrade MSHA regulations have been basically stopped. As I understand it, most of the regulatory proposals that we have discussed this morning are still that: they are just proposals.

Mr. Potter and Mr. Componation, in your opinions, what can be done to expedite the regulatory review process and make sure that the regulations address the needs of the parties involved, and that they are issued?

Why do we not start with you, Mr. Potter, and then go to you, Mr. Componation.

Mr. POTTER. The committees in 1983, 15 committees, prepared their rewrites of the regulations rather quickly. I think within a period of about four months all 15 committees had reported with a draft.

It is my opinion, and I think the opinion was shared at one time by Mr. Lamonica, who was then the administrator, that those regulations should have gone straight to the Federal Register as they were rewritten for comments, and not be concerned about all the nice language at that point.

A review through the solicitor's office and through the Office of Standards is where the hold-up is—was and still is. Then, of course, when it got into the former assistant secretary's office, he brought a person on board who had to review each one of the regulations. So there was another stopgap at that point. It is just like the end of a funnel. You have got regulations that are being prepared, and I think in a decent manner, surely well enough for the industry to comment on, and then take the comments and put them in the legal language.

That would be one way of speeding it up. I do know there are a number of things that have to be done to regulations before they can be released, in order for the people at the Federal Register to accept them, but I am afraid that we have got hung up over there, more in form or procedures than we have in substance.

Senator HATCH. Thank you.

Mr. Componation?

Mr. COMPONATION. I agree with Mr. Potter's analysis of the situation. We prepared our rewrite some time in May. I was there until January of 1984 and continuously attended meetings where people were attempting to rewrite the regulations, as I was told, in language attorneys would understand.

When I retired, we had not accomplished anything. We were still debating as to what was language attorneys would understand.

Senator HATCH. Thank you. I want to thank all three of you for appearing. This has been very helpful to us.

I want to thank the Chairman for holding these hearings. They are very important hearings, as far as I am concerned. I have other conflicts, so I cannot stay through the morning. I apologize, and I particularly apologize to you, Mr. Beason, who is from my own home State of Utah. I have read about what you have to say, and I appreciate your coming and all of the other witnesses here this day.

We need to resolve these problems in the best interest of everybody concerned, but especially those workers who risk their lives going down into the mines.

I appreciate the candid way that each of you has testified this day. I want to thank you for it.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Simon.

Senator SIMON. Thank you, Mr. Chairman. I want to join Senator Hatch in commending you for having these hearings. I just do not think there is any question that these hearings can have a very positive result.

I would like to insert an opening statement in the record.

The CHAIRMAN. Fine. We will insert it in the record after my opening statement.

Senator SIMON. I was just going over some statistics the other day. Up to the age of 34 in our country, there are more people who die of injuries than all diseases combined—heart disease, cancer, everything else. Up to the age of 44, injury is still the most common cause of death.

Now, a lot of these injuries are on the highways, and we ought to do more, through air bags, through a variety of ways of reducing those injuries.

But it is also true that in the industrial side we have way more injuries than we should. Japan, for example, in the last ten years, does not have a single scaffolding death. Now, that is not the area we are talking about here today, but we are talking about the most dangerous single occupation in the United States today, and that is mining.

Mr. McAteer, you suggested a National Mining Safety Board. It occurs to me that maybe it ought to be expanded to a National Industrial Safety Board that covers mining as well as other things. And I note that your Law Center deals not only with mining but with other areas.

What is your feeling in this area?

Mr. MCATEER. Senator Simon, the issue of whether a National Industrial Safety Board ought to be set up was discussed. It was felt that, initially at least, in the conceptual stages we ought to look at it from the standpoint of mining, which is what the committee hearings are about, but that, indeed, there might be some advantages to expanding it to beyond just the mining picture.

The danger and our reluctance to do that was based upon, I think, a feeling that we are not keen on setting up another federal bureaucracy, but we are keen on just thinking through the bureaucracy question and thinking through the system so that it is, one, efficient, and, two, it gets the job done with a small amount of people.

I suppose that we are simply being timid on that basis rather than on the concept basis. On the conceptual notion, it is, I think, a very good idea to expand to such an industrial board. But from the standpoint just at this embryonic stage, our feeling was just to look at it from the mines.

Senator SIMON. I guess my hope is—and I am certainly not opposed to your suggestion, which I think is an excellent one—that ultimately we ought to be looking at this whole question of industrial safety much more carefully than we are now looking at it, and that your suggestion is perhaps a very practical way of moving on that.

Mr. MCATEER. Certainly, Senator, if I might, if we are going to experience—and hopefully we never will—a situation similar in kind or in nature to Bhopal, we will need that kind of an analysis. We will need that kind of review, that kind of ability to take an overview and get at the long problems and be able to solve them.

Senator SIMON. And to prevent that kind of thing from happening.

Mr. MCATEER. Exactly.

Senator SIMON. My guess is one of the things that coal companies and everyone else complains about are insurance rates. And if we can reduce the injuries and fatalities, we, in fact, are going to go a sizable way toward reducing insurance rates.

Mr. Potter, you mentioned the proposals of these 15 committees. I come from a coal mining state.

Mr. POTTER. I know you do.

Senator SIMON. I want to see a healthy coal industry, but I also want to see it safe.

The people on these 15 committees, were these pie-in-the-sky people, or were they people who really understood the practical realities of the coal industry?

Mr. POTTER. Senator, the chairman and the committee members of each of the 15 committees were very carefully selected for their knowledge, their mining experience and for their dedication to wanting to improve health and safety in the mining industry. They were not pie-in-the-sky people; they were realists and they were practical people who had a good knowledge of mining.

In our instruction to the committee, we went so far as to say that if there is any person who has been appointed to this committee that believes that he cannot fulfill the job and devote the time to the job that is necessary to get these out in a timely fashion, we would like for you to talk to the committee chairman and you will be released. We had one person that done that.

Senator SIMON. Now, were these all inspectors? What was their background?

Mr. POTTER. They were from many disciplines. They were inspectors, mining engineers, electrical engineers, ventilation specialists, roof control specialists. So it was a different number of people, but all brought a good mix to their committee.

Senator SIMON. Did they represent the industry side?

Mr. POTTER. They were all from coal mining safety and health and technical support.

Senator SIMON. And they all had some experience in coal mines?

Mr. POTTER. They all had a lot of experience in coal mines.

Senator SIMON. I heard you mention someone said that they did not want any more memoranda written by you and what ought to be done. Who did not want you to write any more memoranda?

Mr. POTTER. Just to refresh my memory on that, I came back from a trip—I think I had been at Wilburg—and I asked Robert

Elam, who had been acting for me, if he had the Greenwich memorandum—that was the one on the Greenwich explosion. And just in passing, I said, "Incidentally, I have not gotten one from you on McClure"—because he headed up the McClure investigation.

And he said, "Spicer does not want any more of those memorandums."

Senator SIMON. Now, who is Spicer?

Mr. POTTER. He was at that time the Deputy Administrator for Coal Mine Safety and Health, and he is now the Administrator.

Senator SIMON. And the general feeling, if I may ask both Mr. Componation and Mr. Potter, your general feeling is that we are involved in foot-dragging in enforcement of coal mine safety, rather than aggressively moving on it; is that correct? I do not want to put——

Mr. POTTER. That is my perception.

Mr. COMPONATION. That is my perception, yes.

Senator SIMON. Thank you, Mr. Chairman.

The CHAIRMAN. I mentioned earlier that we are very grateful to the members of MSHA and those who have retired recently from MSHA, for their willingness to share their experiences with us. We know it is not easy, but I think you certainly will have our commitment that we are going to try and make a difference based upon your testimony. The difference, we believe, will result in safer mines and more lives saved. So you have that assurance. We do not guarantee anything around here, but you have our guarantee of our commitment on that, and we take it very seriously. We know you have taken your responsibilities seriously, and we know these are difficult matters for you to comment on when you have spent a lifetime dedicated and committed to MSHA. But I think in many respects, the greatest service to your agency may very well have been what you told us here today, and we want you to know we are going to act on these recommendations.

We thank you very, very much.

Senator SIMON. If I could just add, Mr. Chairman, I want to commend the three of you, too. Unfortunately, I have another Committee, and I hope to get back here very shortly.

But we are really talking about the lives of people here and an industry that needs to be encouraged, but it needs to be encouraged to move ahead safely.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

We have a second panel which is a very large panel, and we will ask them if they will come up. Mrs. Barbara Myers, from Tracy City, Tennessee and Daniel Simpson from Gulston, Kentucky. And then, some of the present and former employees of the Mine Safety and Health Administration—Mr. Larry Layne, Special Investigator, Barbourville, Kentucky; Mr. Paul Scaff, former Inspector, Barbourville, Kentucky; Mr. Paul Helton, Inspector, Barbourville, Kentucky; Mr. Michael Finnie, Special Investigator, Vincennes,Indiana; Mr. Clarence Goode, Safety and Health Specialist, Arlington, Virginia; Mr. Allen Howell, Special Investigator, Madisonville, Kentucky; Mr. A. Dewey Rife, Special Investigator, Norton, Virginia; Mr. Dorsey Owens, Special Investigator, Norton, Virginia, and Mr. Ronald Beason, Inspector, Moab, Utah.

I understand, Mr. Simpson, you had a little trouble getting up here.

Mr. SIMPSON. Yes, I sure did.

The CHAIRMAN. I think all of us around here have some experience with airplanes, either making it or not making it, or being on time. I understand that you rejected that plane ride and drove all the way up from Gulston, Kentucky; is that correct?

Mr. SIMPSON. Yes, sir.

The CHAIRMAN. So that you could be with us here today. Sometimes we have "no-show" witnesses, but you are certainly a "show" witness here this morning.

How long a trip is that in the car?

Mr. SIMPSON. It is about 550 miles; about six hours, Senator.

## STATEMENT OF BARBARA MYERS, TRACY CITY, TN; LARRY LAYNE, SPECIAL INVESTIGATOR, BARBOURVILLE, KY; PAUL SCAFF, FORMER INSPECTOR, BARBOURVILLE, KY; PAUL HELTON, INSPECTOR, BARBOURVILLE, KY; DANIEL SIMPSON, GULSTON, KY; MICHAEL FINNIE, SPECIAL INVESTIGATOR, VINCENNES, IN; CLARENCE GOODE, SAFETY AND HEALTH SPECIALIST, ARLINGTON, VA; ALLEN HOWELL, SPECIAL INVESTIGATOR, MADISONVILLE, KY; A. DEWEY RIFE, SPECIAL INVESTIGATOR, NORTON, VA; DORSEY OWENS, SPECIAL INVESTIGATOR, NORTON, VA; AND RONALD BEASON, INSPECTOR, MOAB, UT

The CHAIRMAN. Mrs. Myers, we will start off with you, if we could, and I would like to ask you some questions.

As I understand, you lost your husband in the Grundy mine explosion, is that correct?

Mrs. MYERS. That is right.

The CHAIRMAN. And how old was he?

Mrs. MYERS. Thirty-four.

The CHAIRMAN. And do you have children?

Mrs. MYERS. Three.

The CHAIRMAN. And how old were they at the time?

Mrs. MYERS. I had one five, ten, and twelve.

The CHAIRMAN. And how long had your husband worked in the mine?

Mrs. MYERS. Six years.

The CHAIRMAN. And did you worry about your husband working there in the mine?

Mrs. MYERS. No, not—you know it is a more dangerous job than an office job or something like that, but that is all.

The CHAIRMAN. I understand he had finally been able to get on the first shift so he could spend more time with his family; is that right?

Mrs. MYERS. That is right. Our youngest son had started kindergarten, and he thought he should spend more time with him, or all of them.

The CHAIRMAN. Now, I understand the explosion happened at noontime. When did you first hear anything about the tragedy?

Mrs. MYERS. My brother called about 3:30 that evening and told me to call the mine because he did work in the mine and he had gone into the mine to get somebody from the rescue team out to go over there where Charlie worked, at Mine 21. And I called at the mine at 3:55, and they said he was okay, he was fine.

The CHAIRMAN. You called the mine, and they told you that things were all right?

Mrs. MYERS. They said something had happened out there, and I asked them was Charlie okay, and they said, "He is fine. He is okay."

The CHAIRMAN. They indicated your husband was fine.

Mrs. MYERS. That is right.

The CHAIRMAN. Did you assure your children that he was fine?

Mrs. MYERS. Yes.

The CHAIRMAN. And then, when he did not come home on time, were you concerned?

Mrs. MYERS. I was concerned that maybe—I thought there might have been a rockfall or something that was just delaying him getting home.

The CHAIRMAN. And did you finally decide to go out to the mine?

Mrs. MYERS. Yes, maybe 8:30. It was 9:40 before I was told he was dead.

The CHAIRMAN. So you went out about 8:30. And what happened when you got to the mine?

Mrs. MYERS. Well, it is not exactly the mines; it is a preparation plant where they have offices. And I just walked into the office. And he just shook his said, and he said, "I will show you the report," that the president, Mr. Allison, gave the press. And he had that so many minutes after 12, there was an explosion and there were no survivors. And they gave the names of them.

The CHAIRMAN. So you went to the office, and there was some shuffling around of papers, and then you found out that they had issued some release that there had been an explosion and there was a loss of life, and your husband's name was on that list; is that right?

Mrs. MYERS. Yes. They gave the news to the press before they even told me.

The CHAIRMAN. They gave it to the press before they notified you.

Mrs. MYERS. Yes.

The CHAIRMAN. This was just before Christmas, wasn't it?

Mrs. MYERS. The 8th of December.

The CHAIRMAN. And did someone from the company come out to the house?

Mrs. MYERS. The president of the company came, Mr. Allison.

The CHAIRMAN. When was that?

Mrs. MYERS. The 26th of December.

The CHAIRMAN. And did you and some of the other widows sue the company?

Mrs. MYERS. Yes, we did.

The CHAIRMAN. And was there some settlement?

Mrs. MYERS. Yes, there was.

The CHAIRMAN. And are you and the others now suing the Mine Safety and Health Administration?

Mrs. MYERS. That is right.

The CHAIRMAN. And what are you charging?

Mrs. MYERS. We are charging that MSHA was negligent and that they did cause the death of those men.

The CHAIRMAN. So you are saying that the agency itself was negligent in not insisting on the kind of safety precautions that they knew may very well have prevented the tragic accident; is that right?

Mrs. MYERS. That is right.

The CHAIRMAN. Is it your belief that the accident itself could have been avoided?

Mrs. MYERS. Yes, it is.

The CHAIRMAN. And that is the feeling of the other families as well, is it?

Mrs. MYERS. It sure is.

The CHAIRMAN. Fine. Okay.

Mr. Larry Layne, we appreciate your being here. What is your present position?

Mr. LAYNE. Special Investigator with MSHA in Barbourville, Kentucky.

The CHAIRMAN. And how long have you been with the agency?

Mr. LAYNE. I started in 1964.

The CHAIRMAN. And that is when you started as a Special Investigator?

Mr. LAYNE. No, sir. I started as an Inspector in 1964; became a Coal Mine Inspection Supervisor in 1970; in 1977, Special Investigator.

The CHAIRMAN. Okay. Do you have a family?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. And were you the Special Investigator assigned to the investigation conducted by Mr. Componation of the Grundy Mine disaster?

Mr. LAYNE. Yes.

The CHAIRMAN. And were a poor ventilation system and the lack of adequate bleeders the principal causes of the accident?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. And have you seen the ventilation plan that was submitted by the company?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. Do you know if this is it? (Handing document.)

[The ventilation plan referred to follows:]

U. S. Department of Labor
Mine Safety and Health Administration
PO Box 572
Barbourville, Kentucky 40906

SEP 1 . 1981

Mr. Charles "Ed" Presley, Chief Mining Engineer
No. 21 Mine, I. D. No. 40-00524
Grundy Mining Company
P. O. Box 878
Jasper, Tennessee 37347

Dear Mr. Presley:

The Ventilation System and Methane and Dust Control Plan for the above mine submitted in accordance with Subsection 75.316 of the Mandatory Safety Standards, Underground Coal Mines, has been reviewed and is approved for 3 working sections with the following provisions:

1. Drill holes shall be drilled in accordance with Section 75.1701, CFR Part 75, when any working place approaches within the specified distance stated in such section of any abandoned areas or abandoned coal mines that cannot be examined safely.

This plan is the basic system followed at this mine and should any major changes be anticipated, they shall be submitted to and approved by the District Manager before being adopted. Should any significant deficiencies be detected in the Ventilation System and Methane and Dust Control Plan during an inspection or investigation, this approval may be revoked.

UNLESS OTHERWISE NOTIFIED, AN UP-TO-DATE PLAN AND TWO MAPS SHALL BE SUBMITTED TO THE BIRMINGHAM SUBDISTRICT OFFICE BY 21 March 1982.

All provisions of published regulations and criteria pertaining to ventilation and methane and dust control must be followed unless a waiver has been granted in writing by the District Manager.

Very truly yours,

J. L. Spicer
District Manager
District 7

12-8-81 [illegible] map & [illegible] methane info

[illegible] 1-12-82 L D ok

Charles E D Presley
21 Sept. 1981

returned LT 2-16-82

mac
KM 10-6-81
R

U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
P.O. Box 572
Municipal Building
Barbourville, Kentucky 40906

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MEMORANDUM FOR: District Manager, District 7

FROM: Tommy D. Frizzell
Federal Coal Mine Inspector

SUBJECT: Review of Roof-Control Plan and Ventilation, Methane and Dust-Control Plan

The above named plans at the No. 21

Mine, I.D. No. 40-00524, Grundy Mining Co. Inc.

Company, were reviewed 7-24-81 (Date) and found to be:

| | Roof Control | Ventilation |
|---|---|---|
| Adequate | ☐ | ☑ |
| Inadequate | ☐ | ☐ |
| Should be revised | ☐ | ☐ |

Explain reason for revising or justifications:

A review of The Ventilation plan and mine map was reviewed and appears adequate, I recommend The Plan be approved.

TENNESSEE CONSOLIDATED COAL CO

BOX 878 JASPER, TENNESSEE 37347 TELEPHONE (615) 658-5188

established 1905

CHARLES "ED" PRESLEY
Chief Mining Engineer

July 17, 1981

Mr. Jerry L. Spicer
District Manager, District 7
Mine Safety & Health Administration
P.O. Box 572
Barbourville, Kentucky 40906

Dear Mr. Spicer:

Reference the Ventilation System and Methane and Dust Control Plan for Mine No. 21, Grundy Mining Co., Inc., I.D. No. 40-00524.

As shown on the map an airlock will be created between the main intake near Section 008 and the main belt line. This airlock will be constructed according to plan, utilizing any additional brattice material that may be necessary to insure the pushout car and tractor clear the airlock curtains while the dumping operation is in progress.

If any questions should arise concerning the above please contact me at this office.

Sincerely,

Charles Ed Presley

CEP/bb

TENNESSEE CONSOLIDATED COAL CO

BOX 878 JASPER, TENNESSEE 37347 TELEPHONE (615) 658-5188

established 1905

CHARLES "ED" PRESLEY
Chief Mining Engineer

June 5, 1981

Mr. Jerry L. Spicer
District Manager, District 7
Mine Safety & Health Administration
P.O. Box 572
Barbourville, Kentucky 40906

Dear Mr. Spicer:

Reference the Ventilation System and Methane and Dust Control Plan for Mine No. 21, Grundy Mining Company, Inc., I.D. No.40-00524.

Please find attached the updated 6 month submission showing the location of the 2 existing sections 003 & 007 plus the proposed new section, 008.

Projections for 003 and 007 are the same as those previously submitted except for the connection between each section approximately every 1000' feet. Request permission to install an airlock using double (2) metal doorways between the intake of 003 and the return from 007. Both doors are to be maintained in a closed position when not in use and only one door at a time will be opened.

Section 008 will be established by constructing the section separating brattice line in the mains as shown at least one full break outby the advancing faces. All air that crosses the working faces will be directed to the returns as shown. Section dumping will be on the main beltline accessed through a standard curtain airlock, see plan.

If any questions should arise concerning the above, please contact me at this office.

Sincerely,

Charles Ed Presley

CEP/bb

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## VENTILATION SYSTEM AND METHANE AND DUST CONTROL PLAN

## GENERAL

1. COMPANY NAME: Grundy Mining Company, Inc.

MINE NAME: No. 21

POST OFFICE ADDRESS: P.O. Box 878, Jasper, Tn. Marion Co

TELEPHONE NUMBER: (615) 658-6277

M.E.S.A. I.D. NO.: 40-00524

OPERATOR'S NAME: Willard Dove

OPERATOR'S TITLE: General Mine Foreman

OPERATOR'S ADDRESS: P.O. Box 878, Jasper

OPERATOR'S TELEPHONE NO.: (615) 942-5111

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2. Life of mine is greater than one year.

3. Number of employees:

Surface: 11
Underground: 115
Total 126

4. Permanent stoppings, belts separation stoppings, overcasts, and undercasts will be constructed of incombustible material such as concrete, concrete blocks, or similar material approved by the Mining Enforcement and Safety Administration. Construction of permanent stoppings consists of dry stacking the blocks and wedging against the roof, with one side plastered with mortar, or with a plastering substance accepted by M.E.S.A. to seal against air leakage. Mandoors, when used in permanent stoppings, shall be constructed of metal, or fire-retarded material. Overcasts will be constructed of concrete block sides with roof. Concrete block will be used for sides, with joints set with mortar. Steel beams with wood, or metal flooring will be used to construct cement forms for the roof of overcasts. An alternate roof of overcast may be made of steel supports and metal covering weighted down with rock dust bags sealed with mortar along the edges. In addition, metal culverts sections may be used for overcasts or undercasts. Regulators will be constructed of concrete blocks dry stacked, wedged against the roof and plastered, with air flow regulated by adding or deleting blocks as needed. Other stoppings, such as temporary and line curtains, will be constructed of approved flame resistant plastic material or similar material approved by M.E.S.A. Temporary stoppings that are used in rooms that are driven less than 600 feet will be substantially constructed to prevent passage of mobile equipment through all but four stoppings, one near the dumping point, and the first three outby the

working face. Seals will be constructed of solid concrete blocks, or if solid blocks are not available standard concrete building blocks with openings filled with mortar. The blocks will be laid in the transverse pattern (See Sketch #1). Recesses will be cut into the ribs so the blocks can be tied into each rib. The face of the seal will be plastered after installed. A gas sampling pipe with shut-off valve, and a U-type drain will be provided for water drainage.

5. Only one fan will be in operation.

6. A crosscut shall be provided at or near the face of each entry or room driven in excess of 50 feet inby the last open crosscut, before the entry is abandoned. Rooms driven 10' to 50 will be ventilated with line curtain.

METHANE AND DUST CONTROL PLAN

1. A description of dust control practices at the following locations:
   a. Water sprays, Venturi or cone type, a minimum of 1 and maximum of 4 if needed, with 50 psig minimum pressure, located to spray onto the falling coal will be installed at all belt transfer points, see map for locations.
   b. Loading points consist of Stamlers loading onto the belt. The Stamlers are equipped with coal breaker, and a water spray is located near the breaker, see map.
   c. No underground crushers.
   d. No underground dumps.
   e. Stopping and check curtain have been installed in the belt and track entry to limit velocity as to keep the dust to a minimum.
   f. Face areas, ventilation and water.
   g. Water or air control.
   h. No longwall faces.
   i. No other problem areas.
   j. Water shall be used on the cutting machine to allay respirable dust during the cutting operation, either by the use of water sprays or a wet cutter bar.

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2. See the map for any bleeder system or the equivalent employed for ventilating areas from which pillars have been wholly or partially extracted and abandoned areas.
   a. Bleeder entries and abandoned areas should remain free of obstructions in that the mine is employing a full bolting plan.
   b. Line stoppings used to separate the intake and return during operation of the Section are still intact and are used to control the air. Stopping will be installed in bleeder systems where they are needed to control air flows.
   c. A certified Mine Foreman evaluates the ventilation system performance weekly (including bleeder entry or the equivalent). A flame safety lamp, anemometer, and methane detector (M.S.A. Spotter) are used in evaluations. Smoke tubes and an aspirator will be used when necessary.

## SECTION AND FACE VENTILATION SYSTEM

1. See maps for section and face ventilation system. Line curtain will be maintained to within 10 feet of deepest penetration in the face being cut, mined or loaded during the cycle. Coal is cut and loaded with a continuous mining machine or a cutter and loader, then transported from the face areas to belt conveyors with battery-powered mine tractors and ejector-type mine cars or shuttle cars. Roof bolts are installed with roof bolting mahcines with approved dust-collecting units.

2. The quantity of air reaching the last open crosscut will be a minimum of 9,000 C.F.M. The quantity at the end of line curtains, where coal is being cut, mined, or loaded, will be a minimum of 3,000 C.F.M. Pillars are being mined and a minimum of 9,000 C.F.M. reaching the intake end of pillar line.

3. See maps, belts are isolated with permanent stoppings, and regulators are installed at or near tail blocks and at the portal where belts enter the mine, to limit the velocity of air in the belt entries. Mandoors are used as regulators in belt entry.

4. Permanent stoppings will be used to separate intake and return air courses and shall be maintained to and including the third connecting crosscut outby the faces of entries and rooms that are driven more than 600 feet, except that permission is requested that when the height of the coal is too small for equipment to travel, dangerous roof condition, or irregularities in the bottom are encountered in the second crosscut, then a permanent stopping would be erected in the second crosscut and the third crosscut would be open for travel. Permission is requested to install an air lock between the intake and return air courses, near the dumping point on the sections where shuttle cars are used for haulage (See sketch #3).

5. See maps for escapeway symbols.

## MAPS

1. See maps for property limits and location of proposed workings.
2. See map for location of adjacent workings, none above or below.
3. See map for location of mine openings, fan, direction of air flow and air quantities.
4. See map for one year projection.
5. See maps for items 5 - 24.

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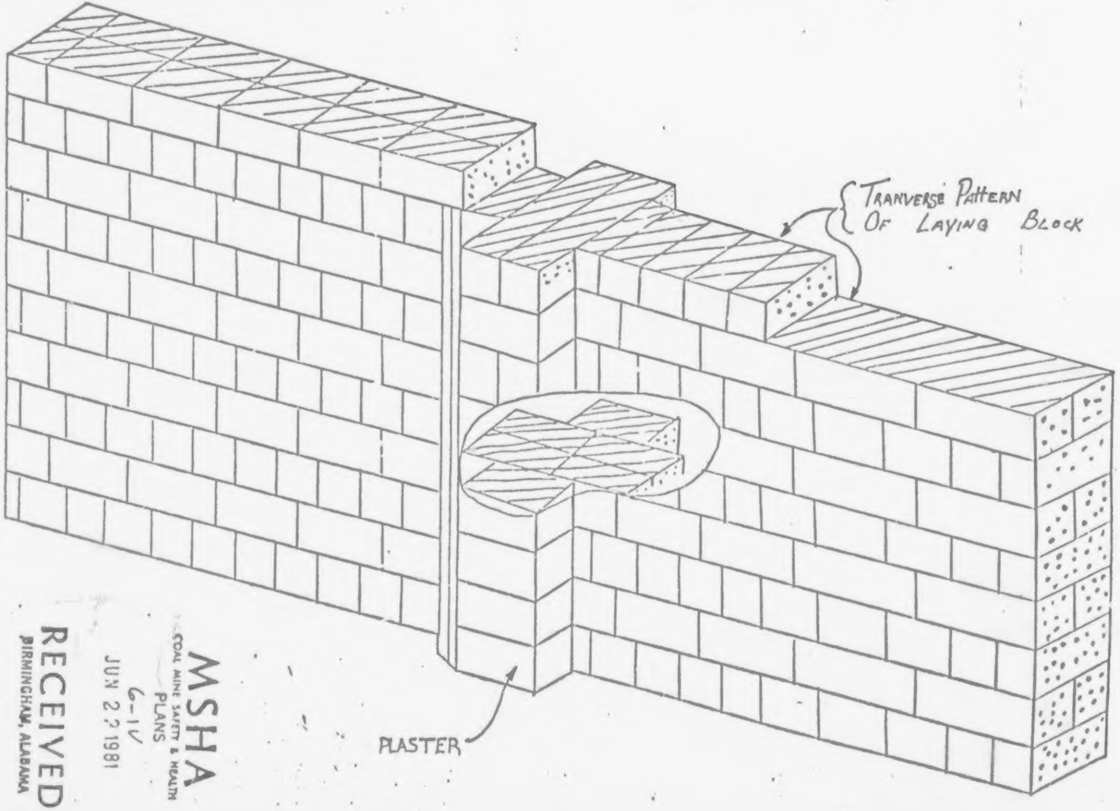
1. A gas sampling pipe equipped with a shut off valve be installed in seals.
2. A U-type drain will be provided for water drainage.

(SKETCH #1)


TRANVERSE PATTERN
OF LAYING BLOCK
PLASTER

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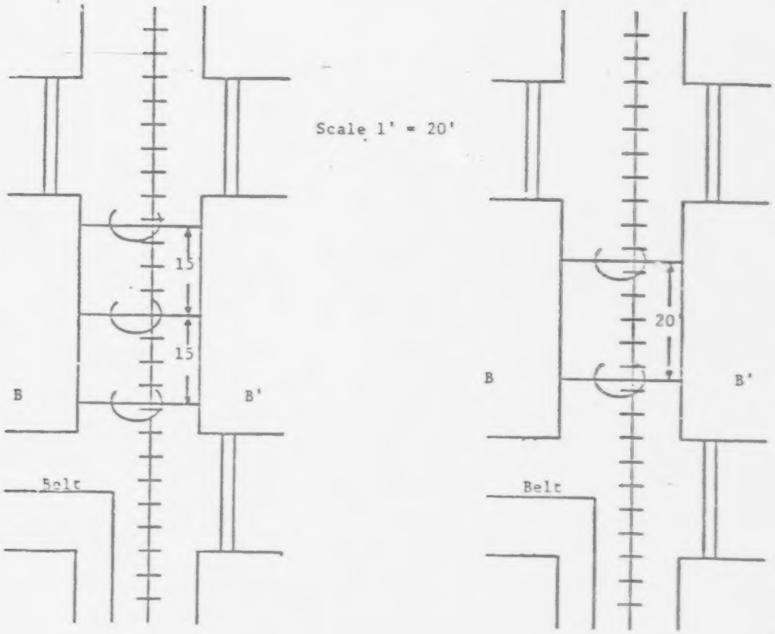
Scale 1' = 20'
15
15
B
B'
Belt
20
B
B'
Belt

SKETCH NO. 2 TYPICAL AIRLOCKS

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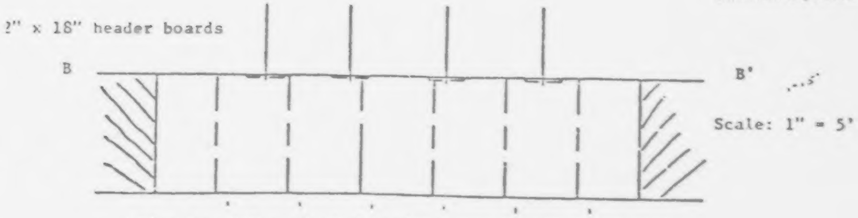
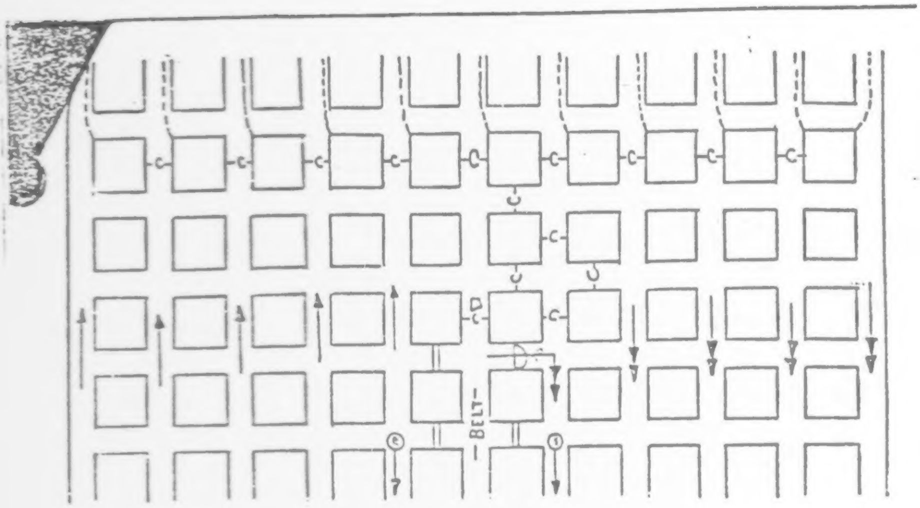

2" x 18" header boards
B
B'
Scale: 1" = 5'

36" belt with a vinyl brattice cover on the outby side.



SKETCH NO. 3

TYPICAL SECTION & FACE VENTILATION SYSTEM FOR MAIN ENTRIES WHERE SHUTTLE CARS ARE USED FOR HAULAGE.

Minimum volume of air last open crosscut - 9,000 CFM
Minimum volume of air at end of line curtain where coal is cut, mined, or loaded - 3,000 CFM

Line curtain will be maintained to within 10 feet of deepest penetration in all working places where coal is being cut, mined or loaded. Blowing and/or exhaust type face ventilation will be used.

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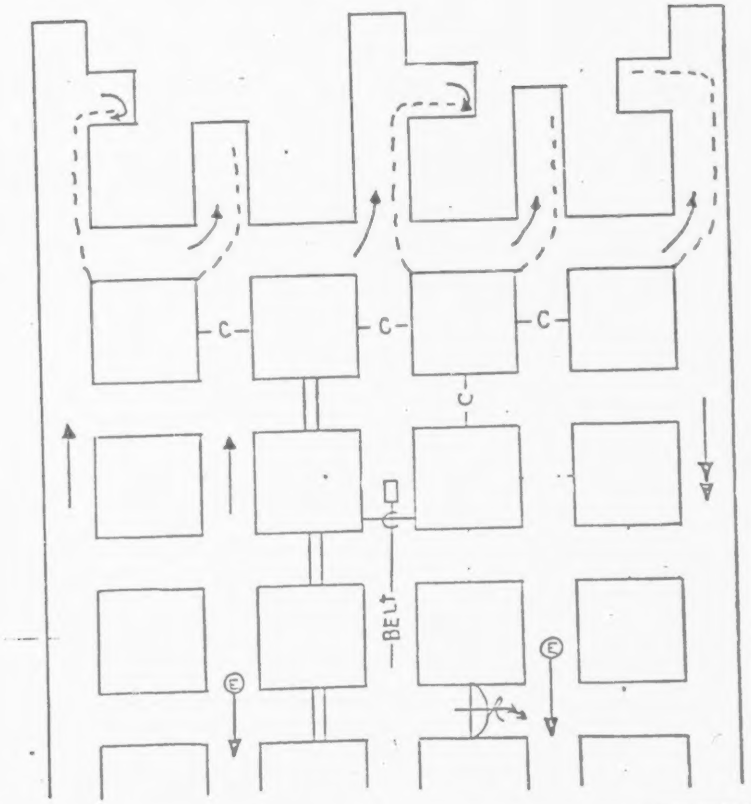
SKETCH NO.



TYPICAL SECTION AND FACE VENTILATION SYSTEM FOR MAIN AND CROSS ENTRIES.
FIVE ENTRY SYSTEM.

Minimum quantity of air last open crosscut - 9,000 CFM.

Minimum quantity of air end of line curtain where coal is cut, mined, or loaded - 3,000 CFM.

Line curtain will be maintained to within ten (10) feet of deepest penetration in all working places where coal is being cut, mined, or loaded. Blowing and/or exhaust type face ventilation will be used.

| | |
|---|---|
| ——→ | Intake Air |
| ——→→ | Return Air |
| ⓔ—— | Escapeway |
| ═══ | Stopping |
| —C— | Curtain |
| ------ | Line Curtain |
| BELT | Belt Line |
| R | Regulator |
| ◡ | Stopping with Door |

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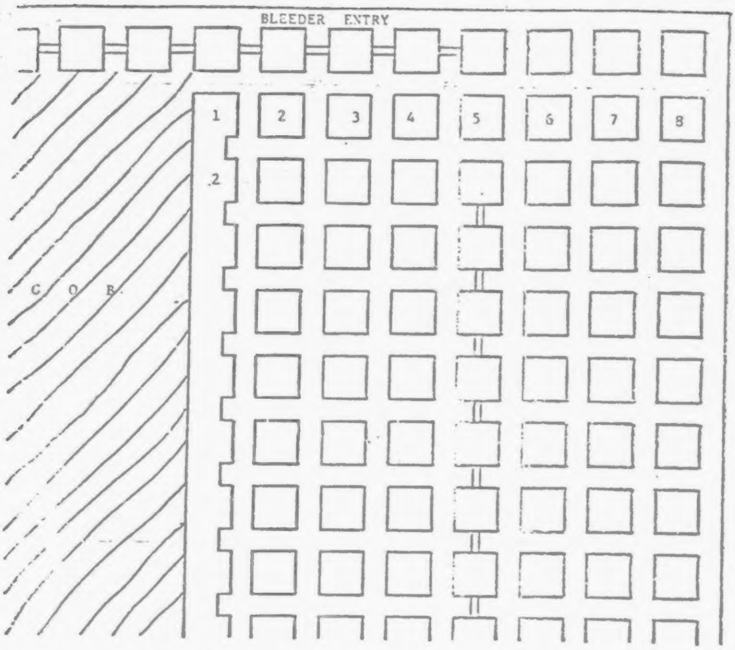

A minimum of one full cut to be left in cross cuts in the barrier pillar when mined on advance.

The cross cuts to be cut through as each line of pillars are mined on retreat

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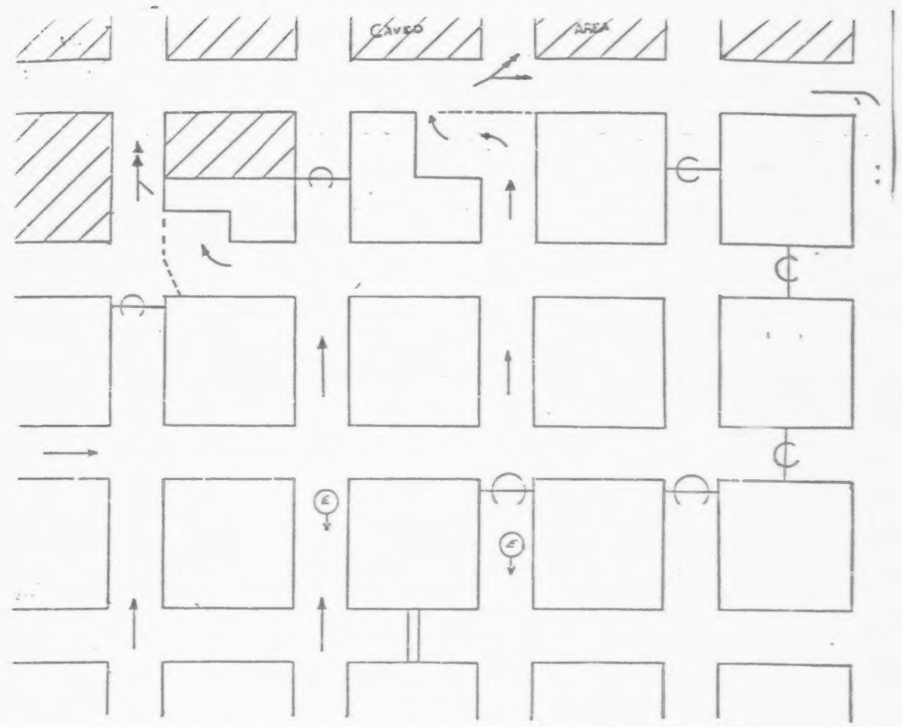
SKETCH NO._____ PAGE NO._______



LEGEND

| | |
|---|---|
| INTAKE AIR | ⟶ |
| RETURN AIR | ↠ |
| PERMANENT STOPPING | = |
| CHECK CURTAIN | ⌒ |
| LINE CURTAIN | – – – – |
| ESCAPEWAY | Ⓔ |

LINE CURTAIN WILL BE MAINTAINED TO WITHIN 20 FEET OF THE AREA OF DEEPEST PENETRATION OF THE WORKING FACE DURING LOADING, CUTTING AND NIMING. EXHAUST TYPE FACE VENTILATION WILL BE USED.

TYPICAL SECTION AND FACE VENTILATION FOR OPEN END PILLAR MINING.

MINIMUM VOLUME INTAKE END OF PILLAR LINE: 9,000 c.f.m.
MINIMUM VOLUME END OF LINE CURTAIN: 3,000 c.f.m. or
60 c.f.m. MEAN VELOCTIY WHICH EVER IS GREATER.

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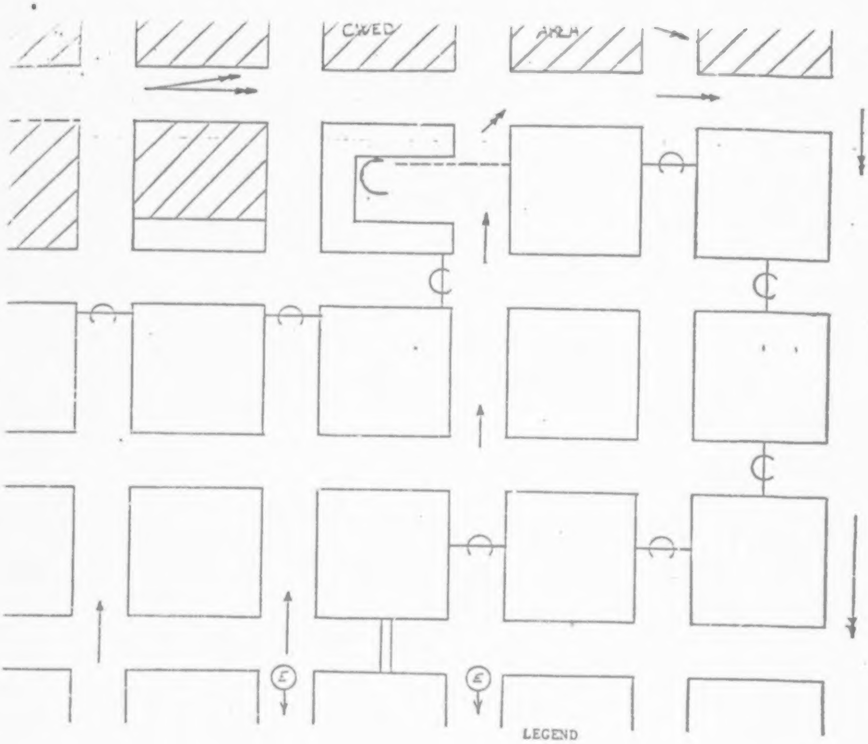

LEGEND

| | |
|---|---|
| INTAKE AIR | → |
| RETURN AIR | ↠ |
| PERNANENT STOPPING | ═ |
| CHECK CURTAIN | ⌒ |
| LINE CURTAIN | - - - - |
| ESCAPEWAY | Ⓔ→ |

LINE CURTAIN WILL BE MAINTAINED TO WITHIN 10 FEET OF THE AREA OF DEEPEST PENETRATION OF THE WORKING FACE DURING LOADING, CUTTING, AND MINING. EXHAUST TYPE FACE VENTILATION WILL BE USED.

TYPICAL PILLARING SECTION AND FACE VENTILATION FOR SPLIT PILLAR MINING.

MINIMUM VOLUME INTAKE END OF PILLAR LINE: 9,000 c.p.m.
MINIMUM VOLUME END OF LINE CURTAIN: 3,000 c.p.m. or 60 c.m.p. MEAN VELOCITY WHICH EVER IS GREATER.

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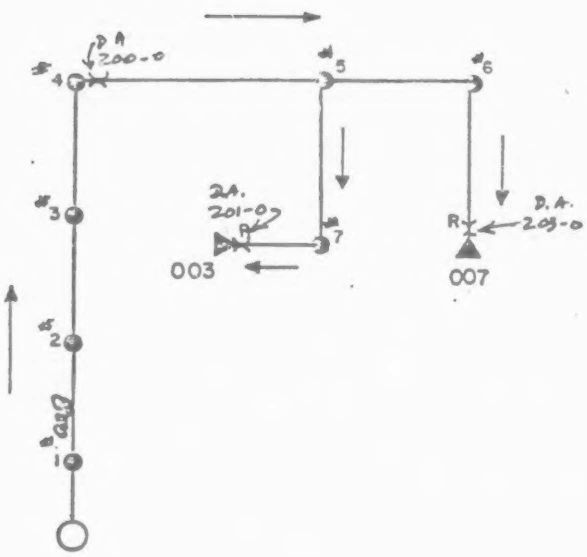
# MINE NO. 21

GRUNDY MINING CO. INC.
ID 40-00524 USMB


#4
D A
200-0
#5
#6
#3
2A.
201-0
R
#7
003
R
D.A.
203-0
007
#2
#1

| | |
|---|---|
| ← | DIRECTION AIR CURRENT |
| ○ | MINE OPENING |
| ● | BELT TRANSFER POINT |
| X | DESIGNATED AREA |
| R | AIR REGULATED TO RETURN |
| ▲ | SECTION DUMPING POINT |
| 00— | SECTION NUMBER |

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## Selection Sheet For Designated Areas

Mine #21 Mine ID 40-00524

Company Grundy Mining Company, Inc.

**To Be Filled In By MSHA**

Location Of Designated Area: Junction Northeast & East Mains Belt Lines: 15± Feet downwind from No. 4 header.

Position Of Sampling Instrument Within Designated Area: At normal breathing level but not less than 1 foot from the roof or rib nor within 2 feet of any obstruction

Designated Area ID: 200-0

Location Of Designated Area: West Belt Line: Regulator 50 ± Feet upwind from the center of the inter-section. where air is directed into the return. (003)

Position Of Sampling Instrument Within Designated Area: Same as above.

Designated Area ID: 201-0

Location Of Designated Area: South Main Belt Line: 007 regulator. 50± feet upwind from the center of intersection where air is directed into returns.

Position Of Sampling Instrument Within Designated Area: Same as 1 above.

Designated Area ID: 203-0

Location Of Designated Area: Mine Supply Route: Parallels belt line entries. see map.

Position Of Sampling Instrument Within Designated Area: Within 36 inches of operators' controls on portal bus.

Designated Area ID: 100-0

Location Of Designated Area:

Position Of Sampling Instrument Within Designated Area:

Designated Area ID:

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Mr. LAYNE. Yes, sir.

The CHAIRMAN. And should it have been approved?

Mr. LAYNE. No, sir.

The CHAIRMAN. Why not?

Mr. LAYNE. Because according to the map, it does not show an adequate methane bleeder system.

The CHAIRMAN. Should the men have gone into the mine that day?

Mr. LAYNE. No, sir.

The CHAIRMAN. And why not?

Mr. LAYNE. The mine should have been dangered-off because methane into the bleeder system had been detected at least four days preceding the explosion. They had drilled exploratory boreholes into the gob and found that the gob was positive, and methane was coming out—which would tell any mining man the bleeder system was totally ineffective.

The CHAIRMAN. Were orders and citations issued as a result of the investigation?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. Were orders reduced after the investigation?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. And who reduced them?

Mr. LAYNE. Mr. Jerry Spicer, the District Manager; John Weekly, the Sub-District Manager; Max Condra, the Supervisor; and Joe Pavlovich, the coal mine Inspector.

The CHAIRMAN. All right. And are these the reductions that were made available to you? Were these the reductions?

Mr. LAYNE. Yes, sir, marked "Exhibit B".

[The exhibit referred to follows:]

Conference Worksheet

U.S. Department of Labor
Mine Safety and Health Administration Event Number 5013531 AFA

1 Date of Conference
08/26/82 2:00 p.m.

2 Operator Name
Grundy Mining Company, Incorporated

3 Type of Conference
☐ A Closeout ☒ B Health and Safety

4 Conference Format
☒ A In person ☐ B Telephone

5 Mine ID
40-00524

6 Mine Name
No. 21

7 Attendees for MSHA (names and positions) J. L. Spicer, District Manager
John E. Weekly, Subdistrict Manager
7. Max H. Condra, Sr., CMI Supervisor
Joseph W. Pavlovich, CMI

☐ A Advised of H&S Conference Right
☐ B Party Status Requested

8 Attending for Operator (names and positions) HOLLIS - SAFETY DIRECTOR
RICK CUSICK - CO. ATTORNEY

9 Attending for Miners' Representative (names and positions) N/A

☐ A Advised of H&S Conference Right
☐ B Party Status Requested

10 Inspector/District Manager Comments

CITATATION No. 0757824 WAS MODIFIED TO A 104(a) CITATION. THE COMPANY CORRECTLY MAINTAINED THERE WAS NO NEGLIGENCE ON THEIR PART SINCE ALL NORMAL CHECKS, WHICH THEY HAD PERFORMED DID NOT REVEAL THE MALFUNCTIONING BLEEDER SYSTEM.

CITATION No 0757825 WAS MODIFIED TO A 104(a) CITATION, BECAUSE NO NEGLECT ON THE PART OF THE COMPANY COULD BE SHOWN

9/13/82
cc:
J. E. Weekly
Files

11 Citation/Orders Discussed at Conference

| A Number of Citations/Orders | B Number of S&S | C Number Identified for Special Assmt Review | 12 Results (1) Number Changed | (2) Number Vacated | 13 Modification Issued to Change Number of Gravity Changes | Number of Negligence Changes | Number of S&S Changed | Number of Special Assmt Status Changed |
|---|---|---|---|---|---|---|---|---|
| 3 | 3 | 3 | 2 | | | 2 | | |

MSHA Form 7000-12, June 82

The CHAIRMAN. And on these reductions, it says "Citation Number 0757824 was modified to a 104(a) citation. The company correctly maintained there was no negligence on their part, since all normal checks which they had performed did not reveal the malfunctioning bleeder system."

And then the second citation, Number 0757825, was modified to a 104(a) citation because no negligence on the part of the company should be known.

Did you subsequently conduct a criminal investigation?

Mr. LAYNE. The criminal investigation was in progress at the time these two orders were modified.

The CHAIRMAN. And did you submit the criminal investigation to agency headquarters?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. And did you recommend prosecution?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. And did someone from headquarters tell you it would not be prosecuted?

Mr. LAYNE. They sent a memorandum out, trying to delay it, and said that they were trying to scrap it.

The CHAIRMAN. Do you remember who said that?

Mr. LAYNE. Mr. Dennis Ryan.

The CHAIRMAN. And he used the words that they were trying to "scrap" it; is that right?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. What is his title?

Mr. LAYNE. He is—I think right now he is Acting Chief of Special Investigations in the Arlington MSHA office.

The CHAIRMAN. The case was referred to the U.S. Attorney by the Solicitor's Office, wasn't it?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. And I will make this document part of the record and read part of it. "After our analysis of the investigative file, we believe that there is insufficient evidence to pursue a civil or criminal violation under the Mine Act. However, we request the case be brought to the attention of the main Justice or the U.S. Attorney's Office for appropriate advice for the following reasons." Then it lists the reasons.

[The document referred to follows:]

MSHA

FEB 16 1984

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District 7 Office

JAN 1 [illegible] 1984

CMS&H Memo. No. HQ-84-466-I (6033)

MEMORANDUM FOR: CYNTHIA ATTWOOD
Associate Solicitor

FROM : RONALD J. SCHELL signed WILLARD E. QUERRY
for Chief, Office of Technical Compliance
and Investigation

SUBJECT : Recommendation for Appropriate Action Under Section 110 of the 1977 Act, Case No. BARB-CSI-82-03, Grundy Mining Co., Inc. No. 21 Mine

The above-named case was forwarded for your review on November 17, 1983. We stated that our recommendation would soon follow.

After our analysis of the investigative file, we believe that there is insufficient evidence to pursue a civil or criminal violation under the Mine Act. However, we request the case be brought to the attention of Main Justice or the United States Attorney's Office for appropriate advice for the following reasons.

1. The investigation was initiated as the result of a disaster.
2. Serious ventilation violations were cited but were not adequately investigated during the investigation. ?
3. Subsequent attempts to reinterview management officials were to no avail.
4. A suit is pending against MSHA as the result of the diraster.

bcc: M. Yanak
OTC&I CASE FILES
SOL & ASSESS FILES
MSHA Files, Rm. 737A, Code: 6033 (Special Investigation)
MC:MYANAK:brr:1/17/84:235-8570

The CHAIRMAN. Was the U.S. Attorney concerned about the reduction?

Mr. LAYNE. Yes, he was.

The CHAIRMAN. And did it have a material effect on the penalties?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. Was the company indicted?

Mr. LAYNE. No, sir. The negligence was removed, and they were changed from orders to citations.

The CHAIRMAN. I believe they were indicted, though, weren't they?

Mr. LAYNE. They pled guilty on five counts.

The CHAIRMAN. So they pled guilty. And what was the penalty?

Mr. LAYNE. One hundred five thousand dollars.

The CHAIRMAN. I have the document here for the record. It is Exhibit D. "It is ordered that the Defendant, the Grundy Mining Company, be fined $21,000 on each count of the five-count indictment, for a total of $105,000, said fine to be paid to the United States of America on or before. . . ."

[The document referred to follows:]

United States District Court for

Northern Division
Eastern District of Tennessee

DEFENDANT: GRUNDY MINING COMPANY, INC.

DOCKET NO. 85-06M
(CR-1-85-3)

# JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date → MONTH DAY YEAR January 14, 1985

COUNSEL

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Thomas Kale (retained)
(Name of counsel)

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PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea. ☐ NOLO CONTENDERE, ☐ NOT GUILTY

FINDING & JUDGMENT

There being a finding ~~xxxx~~ of ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY

Defendant has been convicted as charged of the offense(s) of violations of Title 30 §§877(c); 820(d); 863(o)(d)(1)(u)(r), by failing to institute and carry out a program to ensure that any person entering the underground area of its mine did not carry smoking material, matches or lighters, underground; failure to erect permanent stoppings between the intake and return airways as required; failure to post a "danger" sign and failure to withdraw all persons other than those authorized to enter for the purpose [illegible] eliminating said hazardous conditions; failure to idle the mine and remove electrical power from the area before work began on the air change; and permitting 003 and 007 mechanized sections of No. 21 Mine to be ventilated with the same split of intake air.

SENTENCE OR PROBATION ORDER

SPECIAL CONDITIONS OF PROBATION

It is ORDERED that defendant, Grundy Mining Company, Inc., be fined $21,000 on each count in the five-count indictment for a total of $105,000, said fine to be paid to the United States of America on or before February 1, 1985.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
☐ U.S. District Judge
☒ U.S. Magistrate

John Y. Powers

Date 1/14/85

ATTEST:
A true copy.
Certified this JAN 21 1985
[illegible], JR., CLERK
By [illegible]
Deputy Clerk

The CHAIRMAN. Was it recommended that a ventilation survey be conducted before the mine could reopen?

Mr. LAYNE. Yes, sir, by Mr. Paul Componation.

The CHAIRMAN. Who is he?

Mr. LAYNE. Paul Componation was a ventilation expert out of the MSHA Arlington office.

The CHAIRMAN. And did the mine reopen without the survey?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. Was a ventilation survey subsequently conducted?

Mr. LAYNE. Yes, sir, on June 14 through 24, 1982.

The CHAIRMAN. And what was the result?

Mr. LAYNE. The results of the survey conducted by technical support people showed that the mine was inadequately ventilated.

The CHAIRMAN. Inadequately ventilated; is that correct?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. And we will make that investigative report a part of the record.

[The report referred to follows:]

# Investigative Report P212-V118

## Grays Creek No. 21 Mine - ID 40-00524
Grundy Mining Company, Incorporated
Whitwell, Marion County, Tennessee

June 14-24, 1982

by

Robert A. Haney[1], Gary E. Smith[1], Charles D. Campbell[1]

and

R. Keith Younger[2]

## INTRODUCTION

From June 14-24, 1982 an absolute pressure-air quantity mine ventilation investigation was made at Grays Creek No. 21 Mine, Grundy Mining Company, Incorporated, owned by Tennessee Consolidated Coal Company, located near Whitwell, Marion County, Tennessee. The investigation was conducted by the Ventilation Division, Pittsburgh Health Technology Center and Coal Mine Safety and Health District 7. Appendix I is a list of MSHA participants.

The Investigation was requested by the Subdistrict Manager, Coal Mine Safety and Health District 7, Birmingham, Alabama. The purpose was to gather sufficient data to review the existing mine ventilation system and to provide a base for digital computer simulations of proposed changes to the system. This report summarizes the results of the investigation.

## GENERAL INFORMATION

Grays Creek No. 21 Mine was opened by nine drifts into the 39 inch thick Sewanee coalbed. The nine drift openings included five intake entries, one belt entry and three return entries. Two of the return drifts were stopped off inby the surface openings. The mine employed approximately 120 underground employees on one maintenance and two production shifts, producing approximately 1200 tons of coal per day from three conventional mining sections. Coal faces were undercut, drilled, and shot. Electric loading machines were used to load coal onto either electric shuttle cars or battery ram cars for transportation to the section conveyor belts. Coal was transported from the sections to the surface by a conveyor belt haulage system. Personnel and supplies were transported from the surface to the sections by battery powered rail vehicles. Off rail transportation was provided by battery powered rubber tire vehicles. Based on the analysis of vacuum bottle air samples collected at the mine fan during the investigation, the daily methane liberation rate was 18,000 cubic feet.

---

[1] Mining Engineer, Pittsburgh Health Technology Center, Pittsburgh, PA
[2] Industrial Hygienist, Pittsburgh Health Technology Center, Pittsburgh, PA

## MINE VENTILATION

Mine ventilation was induced by a Jeffrey 8HU-72 Aerodyne Mine Fan installed at the surface and connected by suitable ductwork to a return drift opening. The fan was belt driven by a 460 VAC, 300 horsepower electric motor. At the time of the investigation the motor, which had a current rating of 350 Amps, was drawing 200 Amps. The fan was operating at a speed of 1200 rpm, resulting in a blade tip speed of approximately 22,600 fpm. The fan exhausted approximately 166,000 cfm of air from the mine at a fan rated static pressure of 6.90 inches of water and a density of 0.070 pounds per cubic foot. The air quantity and pressure measurements indicated the fan was operating between the 5B-5S and the 6B-6S blade positions. Figure 1 shows the manufacturers fan characteristic curves for these two blade positions along with the mine resistance curve and the measured fan operating point. This figure indicates that the fan is operating in the stable portion of the fan performance curve and that an increase in fan pressure of approximately 1.5 inches of water would move the fan operation into the stall zone of the fan performance curve.

## MINE AIR QUANTITY AND QUALITY

Figure 2 is a single line airflow diagram showing mine airflow direction, air quantities, and total ventilating pressures throughout the mine. The ventilating pressures are given in inches of water and the air quantities are given in 100,000 cfm units (100,000 cfm is shown as 1.00). The pressures and quantities are balanced and are suitable for computer simulation of mine ventilation system modifications. Also shown on figure 2 are the results of analysis of vacuum bottle air samples collected at various locations in the mine. Results of the analysis showed the mine air quality to be adequate with the highest methane concentration being 0.06 volume percent. Also shown are the analysis of vacuum bottle air samples of the environment behind the various sets of seals in the mine. The lowest oxygen concentration behind the seals was 18.60 volume percent and the highest methane content was 0.07 volume percent.

Airflow entered the mine through the one belt and five intake drift openings. Airflow was coursed to the three active sections through a set of parallel intake entries. Each active section was ventilated on a separate split of air. In addition to the three active sections, separate air splits were provided for ventilation of the 5 Right gob area and the gob and idle area north and west of the main intake and return entries. Stoppings separating intake, return, and belt entries were constructed from hollow core concrete blocks. The blocks were dry stacked and plastered. Overcasts were constructed from rail and sheet metal decking supported on concrete block walls.

Belt airflow direction on both the 003 Section and 007 Section was away from the face. Section 007 belt air traveled from the face to the mouth of the section, where it met with incoming air on the main belt. Belt air from the main belt and the 007 belt traveled through the 003 belt entry to the 35th crosscut inby the 003 intake overcast. There it combined with belt air traveling away from the 003 face and entered the return through the crosscut where a stopping between the belt and return entries had been crushed out. This stopping was reportedly repaired following the investigation.

A summary of the distribution of the total air volume induced into the mine is as follows:

1. Airflow at the last return stopping of each production unit.

| | | |
|---|---|---|
| A. | 003 Section | 13,000 cfm |
| B. | 007 Section | 10,000 |
| C. | 008 Section | 11,000 |
| | | 34,000 cfm (20 percent) |

2. Air leakage from intake to return entries.

| | | |
|---|---|---|
| A. | Drift openings to 5 Right | 8,000 cfm |
| B. | 5 Right overcasts | 28,000 |
| C. | 5 Right to mouth of 003 Section | 17,000 |
| D. | Mouth of 003 Section | 4,000 |
| E. | 003 Section | 16,000 |
| F. | 007 Section | 13,000 |
| G. | 008 Section | 12,000 |
| | | 98,000 cfm (60 percent) |

3. Intake air splits not used to ventilate active units.

| | | |
|---|---|---|
| A. | 5 Right Gob Area | 21,000 cfm |
| B. | North end of Mains | 13,000 |
| | | 34,000 cfm (20 percent) |
| Total | | 166,000 cfm (100 percent) |

The airflow distribution summary indicates that approximately 20 percent of the 166,000 cfm of air that enters the mine is used to ventilate the active sections. An additional 20 percent of the air is used to ventilate idle or abandoned areas and the remaining 60 percent of the airflow was lost as leakage from intake to return entries. Approximately 29 percent of the leakage occurred at the set of overcasts at 5 Right and 42 percent of the leakage occurred along the stopping lines of the three active sections. The remaining leakage (29 percent) occurred between the main intake and return entries from the mouth of the mine to the mouth of the 003 and 007 Sections.

## PRESSURE GRADIENTS AND AIRFLOW REGULATION

Figure 3 shows the ventilation pressure losses incurred by the air current as it flows to and from the 3 active sections in the mine. The gradient shown was constructed by plotting the total ventilation pressure measured at key locations against the distance of that station from the intake or return opening. The slope of the line on the graph indicates the pressure loss to length of airway; therefore a steep slope on the pressure gradient indicates an area in the mine with either high resistance to airflow or a high airflow quantity. Steep pressure gradient areas are of primary concern when locating portions of the mine where improvements in terms of reduced mine resistance, would have the greatest effect.

Airflow for Sections 003 and 007 share common intake and return entries from the section mouths to the drift openings, and therefore have the same pressure gradients except for the area inby the section mouths. Inby the section mouths, the intake and return pressure gradients for both sections have a gradual slope; this indicates that these airways are adequate for the airflow directed through them. Return entries from both sections meet outby the 007 regulator. The 007 regulator, which had a pressure drop of 0.06 inches of water, was constructed by a partially knocked out block stopping. The 003 Section was an open split.

During the survey a pressure drop of 0.01 inches of water was measured from the 007 return to the 003 intake. This pressure was measured across an airlock door that separated the two sets of entries. With the airlock doors closed there was no measurable flow from the 007 return to the 003 intake, however if the doors were opened or the airlock stoppings crushed out there would be flow from the 007 return to the 003 intake.

Regulation of airflow through the 5 Right gob area was provided by a set of stoppings built across the entries of the 003 Section. These stoppings were constructed from dry stacked hollow core concrete blocks, allowing airflow of approximately 21,000 cfm at a pressure drop of 0.23 inches of water.

The pressure gradient for 008 Section is also shown on figure 3. The intake pressure gradient to this section had a gradual slope. There were two regulators on the 008 Section, constructed by hanging conveyor belt across the entry. Pressure drops across these regulators were 0.25 and 0.85 inches of water.

Air that ventilated 008 Section, along with a split of air that ventilated the west side of the mains, was directed across a set of overcasts at 5 Right. A regulator was located on the outby side of the track overcast and had a pressure drop of 1.05 inches of water. Pressure lost due to resistance across these overcasts was approximately 0.93 inches of water.

The slope of the return pressure gradient from 6 Right to the outside was the steepest part of the pressure gradient, other than regulators. Of the 6.90 inches of water pressure induced by the fan, 5.17 inches of water were lost in the return entries between 6 Right and the fan. This was due to roof falls observed in this area and the practice of loading gob material into crosscuts. A restriction was also caused by reducing the number of return entries from three to one near the return drift opening. The 0.23 inches of water regulation indicated in the return inby 5 Right was caused by overcasts and ventilation controls that had not been removed following mining in this area.

These pressure gradients show that the limiting factor on the ventilation system was the return airways between 6 Right and the fan. This indicates that without reducing airway resistance in this area, significant improvements to the ventilation system cannot be made.

## DISCUSSION

At the time of the investigation, No. 21 Mine reportedly had 4 to 6 months of development work remaining. At this time pillars would be extracted from the 003 and 007 Sections and chain pillars would be extracted along the main intakes and returns. The estimated life of the mine was reportedly 2 to 3 years.

During the development of No. 21 Mine, adjacent abandoned and active mines had been cut into on several occasions. Seals had been constructed to separate No. 21 Mine from these areas. All of the seals separating No. 21 Mine from other mines had pressure differentials from the adjacent mine into No. 21 Mine. These pressure drops are shown on figure 2. Additionally a set of seals had been constructed at the northern end of the main intake and return to isolate a gob area from the rest of the mine. A water seal reportedly existed in the 5 Right gob area approximately 1500 feet from the return entries. This water seal isolated the eastern portion of the 5 Right gob area from the rest of the mine.

In order to insure that a mine ventilation system is functioning properly, air quantity and quality measurements should be taken to evaluate the airflow into and out of an area of a mine. During mine development, rock from "squeeze" or "want" areas had been gobbed into crosscuts. This practice reduced the number of entries that could be used as air courses and by limiting access to these entries, reduced the ability to evaluate the ventilation system. Should a roof fall occur in one of the entries that is currently travelable, a major restriction to the airflow could occur. Additionally, because of this practice, should a roof fall occur in a return escapeway it would be difficult to redirect the escapeway route. In addition to evaluating the ventilation of intake and return entries in a mine, the performance of bleeder systems designed to ventilate gob or abandoned areas must also be evaluated. When bleeder systems are open or safe to travel, measurements can be taken along the entries of the bleeder system. When bleeder entries are not accessible for evaluation, an alternative method should be established to indicate where airflow is entering or leaving a gob area of the mine and a location should be established to evaluate the quality of the airflow passing through the gob area.

Balanced airflow quantities and ventilating pressures indicated that there was airflow through the 5 Right and 6 Right gob areas. However, because of the inaccessibility of the areas where this airflow enters the main return, there was no single location where an evaluation of the quality of air passing through the gob areas could be made.

Airflow was entering and leaving the gob area and idle area on the north and west side of the main intake entries and the gob area west of the 003 Section. A location was available where this airflow could be evaluated; however, the mine development method used in these areas does not insure that airflow passes through or around these areas. The air quality measurement taken at the outlet of these areas may only be indicative of the airflow quality passing along the outby perimeter of the area.

In order to function properly a bleeder system must remain open to airflow. Little additional roof support was observed in entries being developed as bleeder entries or in travelways to bleeder evaluation points. As a result bleeder entries deteriorate and bleeder evaluation points must be established. When the safety of a bleeder evaluation point deteriorates, the point is moved outby. This practice makes it difficult to obtain an evaluation of a bleeder system performance. Sufficient roof support should be provided while developing bleeder entries and in travelways to bleeder evaluation points to assure safe access to these areas.

## CONCLUSIONS

1. At the time of the investigation the total air volume induced by the mine fan was 166,000 cfm at a fan rated static pressure of 6.90 inches of water.

2. Approximately 20 percent of the total mine airflow reached the three active sections.

3. The major portion of airflow leakage from intake to return entries occurred at the 5 Right overcasts and along the stopping lines of the three active sections.

4. Airflow direction in the belt entry of 003 and 007 Sections was away from the face of the section.

5. Of the 6.90 inches of water pressure induced by the fan, 5.17 inches of water were lost in the return entries between 6 Right and the fan.

6. Regulation was provided on Sections 008 (1.10 inches of water) and 007 (0.06 inches of water), while 003 was an open split.

7. At the time of the investigation the pressure drop on all seals was from the sealed area into No. 21 Mine.

8. The quality of the airflow passing through the 5 Right and 6 Right gob areas could not be effectively evaluated.

9. Air quality measurements taken outby the gob area north of the main intake, the idle area west of the main intakes, and the gob area west of the 003 Section gives little indication of the airflow through these areas.

10. Sufficient roof support was not provided while developing bleeder entries, or in travelways to bleeder evaluation points, to insure that they would remain open for travel.

11. The highest methane concentration detected in the mine during the investigation was 0.06 volume percent. This was measured in the return of the 007 Section.

12. Analysis of air samples collected from sealed areas adjoining the mine indicated methane concentrations less than 0.07 volume percent and oxygen concentrations greater than 18.60 volume percent.

## RECOMMENDATIONS

1. The resistance to airflow in the return entries between 6 Right and the fan should be reduced.

2. A method should be established to obtain a positive control of the airflow in the belt entries.

3. A method should be established to evaluate the airflow through the gob areas at 5 Right and 6 Right.

4. Either ventilaion controls should be established to insure that airflow is directed through the gob area north of the main intakes, the idle areas west of the main intakes, and the gob area west of the 003 Section or these areas should be sealed.

5. Additional roof support should be provided in the bleeder entries, and in travelways to bleeder evaluation points, to assure that these areas remain accessible.

# APPENDIX I

MSHA personnel participating in
the ventilation investigation at
Grays Creek No. 21 Mine, June 14 - 24, 1982

## Ventilation Division, Pittsburgh Health Technology Center

| | |
|---|---|
| Robert A. Haney | Mining Engineer |
| Gary E. Smith | Mining Engineer |
| Charles D. Campbell | Mining Engineer |
| R. Keith Younger | Industrial Hygienist |

## Coal Mine Safety and Health, District 7

| | |
|---|---|
| Jerry Early | Coal Mine Inspector |
| Tommy D. Frizzell | Coal Mine Inspector |
| Billy C. Layne | Surface Mine Inspector |
| Clyde J. Layne | Coal Mine Inspector |
| Johnny L. McDaniel | Coal Mine Inspector |

## ACKNOWLEDGMENT

The cooperation and courtesies extended by mine management during this investigation are greatfully appreciated.

R.A. Haney
R. A. Haney

G.E. Smith
G. E. Smith

C. D. Campbell
C. D. Campbell

R. K. Younger
R. K. Younger

Approved by:

James L. Banfield Jr.
James L. Banfield, Jr.,
Chief, Ventilation Division

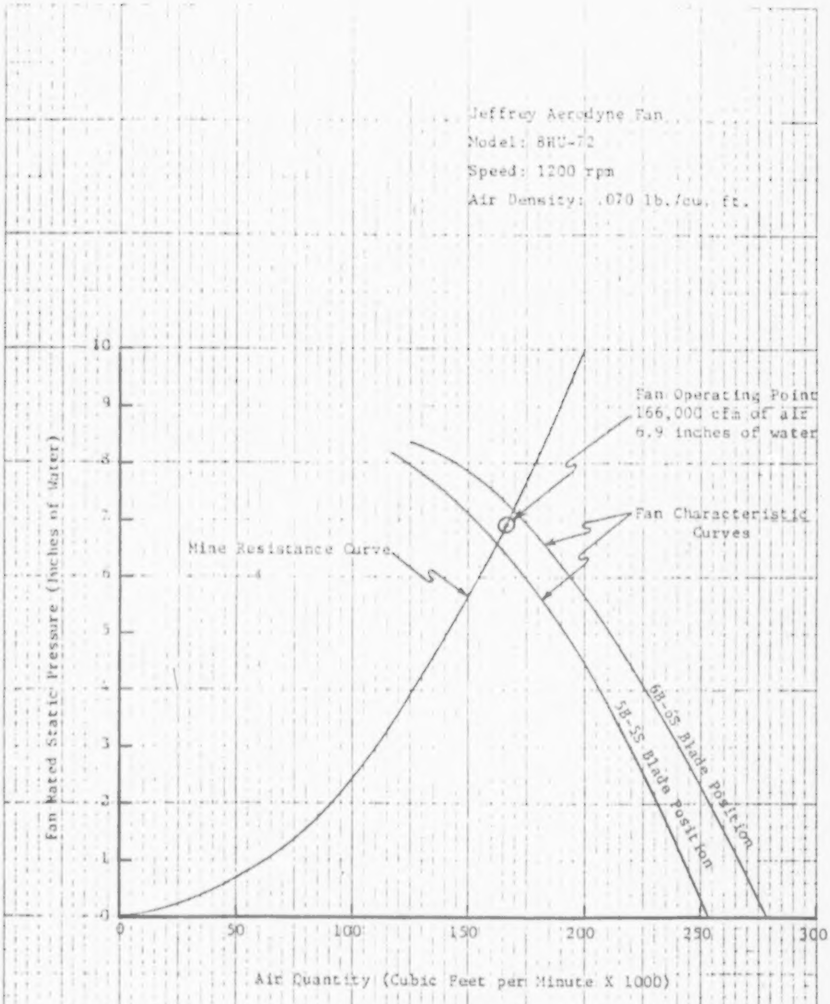


Figure 1 - Fan Characteristc and Mine Resistance Curves for Grays Creek No. 21 Mine, June, 1982

NO. 340-10 DIETZGEN GRAPH PAPER
10 X 10 PER INCH
EUGENE DIETZGEN CO.
MADE IN U. S. A.

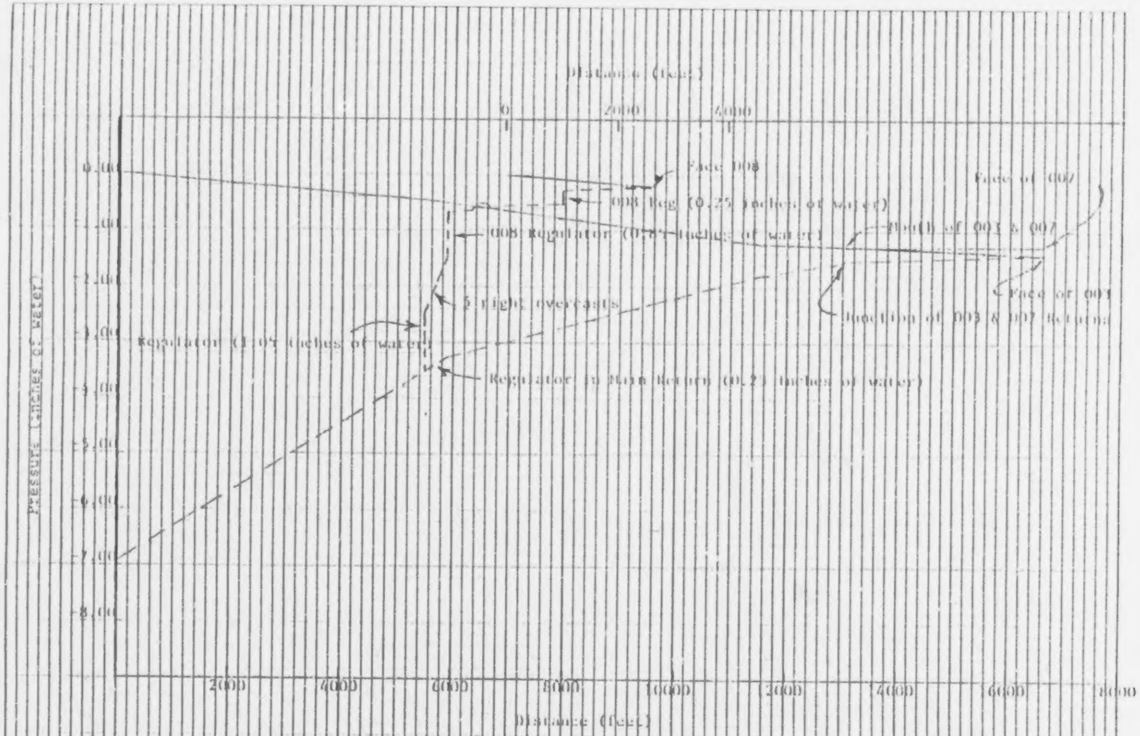


Figure 3 - Pressure Gradient Grays Creek No. 2 Mine, 003, 007, and 008 Sections - June 1982

The CHAIRMAN. Did the mine continue to operate, anyway?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. Did you include the results of the survey in your criminal investigative report?

Mr. LAYNE. Yes.

The CHAIRMAN. Were you told to delete it?

Mr. LAYNE. Yes, I was.

The CHAIRMAN. Who told you, and what was said?

Mr. LAYNE. Mr. Ken Dixon, I think, was a ventilation supervisor at that time, and he told me he had discussed this with Jerry Spicer, who was the District Manager, and he and Spicer had decided that they did not want that ventilation survey included in my report.

The CHAIRMAN. Did you delete it?

Mr. LAYNE. No, sir. I told them that I had already discussed it with Paige Jackson, an attorney from the Solicitor's Office, and he told me to include it. I told them that if they wanted to take it out, go ahead; I put it in there.

The CHAIRMAN. When you were in the Jasper, Tennessee area during the Grundy investigation, did you locate an illegal mine?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. How long had that mine been operating?

Mr. LAYNE. I think since sometime back in 1978.

The CHAIRMAN. Had the mine been inspected?

Mr. LAYNE. No, sir.

The CHAIRMAN. Why not?

Mr. LAYNE. Because I asked Max Condra, who was the supervisor, why it had not been inspected, and he said that Jerry Spicer had given him instructions and orders to keep the mine inspectors away from it. I wrote a memorandum——

The CHAIRMAN. You wrote a memorandum to that office, didn't you?

Mr. LAYNE. Yes, sir. I wrote it to Kenneth Dixon on October the 11th, 1983.

The CHAIRMAN. And is this the memo you wrote and the fatal accident report? (Handing document.) There was a man killed there, was there not?

Mr. LAYNE. Yes, sir, on October the 14th.

The CHAIRMAN. Now, you filed a report on October 11th, did you not, on that mine, and a man was killed on October 14th?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. We will make this a part of the record. It says, "M & W Coal Company is an illegal underground mine located near Jasper, which has operated for several years. About 20 miners work underground, one shift a day. A surface fan is not operated when miners are inside."

And then you continued "This mine has not been inspected because Jerry Spicer issued instructions to stay away from this operation."

That was October 11th, and a miner was killed there shortly after that; is that correct?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. And we will include the fatality report as well.

[Information supplied for the record follows:]

**U. S. Department of Labor**

Mine Safety and Health Administration
PO Box 572
Barbourville, Kentucky 40906

October ~~12~~ 11, 1983

MEMORANDUM FOR: KENNETH DIXON

FROM: Lawrence L. Layne LLL

SUBJECT: Investigation of Discrimination Complaint, Case No. BARB-CD-83-33, Verlon David Perry vs. M. and W. Coal Company

M. and W. Coal Company is an illegal underground mine located near Jasper, Tennessee, which has operated for several years. About 20 miners work underground, one shift a day. The surface fan is not operated when miners are inside the mine. Blasting with fuses is done at the end of each shift and if smoke is in the faces the next morning, window fans are used for face ventilation.

The coal is hauled to Tennessee Consolidated Coal Company's Preparation Plant, to a Cement Plant on Suck Creek in Chattanooga, Tennessee, and to two other small tipples.

Max Condra stated that this mine has not been inspected because Jerry Spicer issued instructions to stay away from this operation.

To ascertain the disposition of Case No. BARB-CD-83-33 a determination of MSHA's jurisdiction must be made at this mine.

UNITED STATES
DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

District 7

MSHA

MAY 17 1984

RECEIVED
Barbourville, Ky.
District 7 Office

# REPORT OF INVESTIGATION
(Underground Coal Mine)

## Fatal Powered-Haulage Accident

No. 1 Underground Mine (ID No. 40-02844)
M & W Coal Company, Inc.
Palmer, Grundy County, Tennessee

October 14, 1983

by

Joseph W. Pavlovich
Mine Safety and Health Specialist
Max H. Condra, Sr.
Supervisory Coal Mine Safety and Health Inspector

Originating Office - Mine Safety and Health Administration
228 West Valley Avenue, Birmingham, Alabama 35209
John E. Weekly, Subdistrict Manager

Abstract of Investigation

U.S. Department of Labor
Mine Safety and Health Administration

*Authority*—This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164.

Section A—Identification Data

1. Title of investigation: FATAL POWERED HAULAGE ACCIDENT
2. Date MSHA investigation started: November 30, 1983
3. Report release date:
4. Mine: No. 1 Underground Mine
5. Mine ID number: 40-02844
6. Company: M & W Coal Company, Inc.
7. Town, County, State: Palmer, Grundy, Tennessee
8. Author(s): Joseph W. Pavlovich/Max H. Condra, Sr.

Section B—Mine Information

9. Daily production: 215
10. Surface employment: 1
11. Underground employment: 17
12. Name of coalbed: Sewanee
13. Thickness of coalbed: 39"

Section C—Last Quarter Injury Frequency Rate (HSAC) for:

14. Industry:
15. This operation:
16. Training program approved:
17. Mine Profile Rating:

Section D—Originating Office

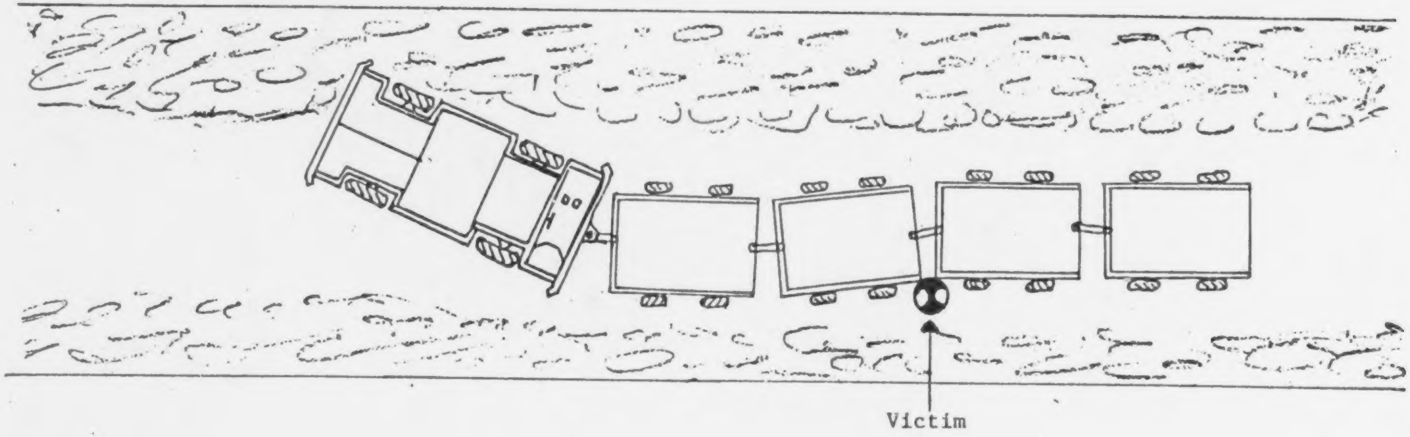
18. Mine Safety and Health Administration
Coal Mine Health and Safety District No.: 7
Address: P.O. Box 572 Barbourville, KY 40906

Section E—Abstract

On October 14, 1983 at approximately 12:30 p m, a powered haulage accident occurred along the main haulage way of the M & W Coal Company, Inc. No. 1 Mine. James Luke McCarver, battery tractor operator, received fatal crushing injuries after falling or was pulled from the operator's compartment of the tractor. The tractor continued to tram, pulling two loaded rubber-tired trailers over the victim. The actual cause of the accident could not be determined due to the denial of entry to the scene or equipment involved in the accident.

Section F—Mine Organization

| Company officials: | Name | Address |
|---|---|---|
| 19. President: | Margaret Crabtree | Rt. 1, Box 355 Palmer, TN |
| 20. Superintendent: | | |
| 21. Safety Director: | | |
| 22. Principle officer—H&S: | | |
| 23. Labor Organization: | | |
| 24. Chairman—H&S Committee: | | |



Fatal Powered-Haulage Accident
No. 1 Underground Mine (ID No. 40-2844)
M & W Coal Company, Inc.
Palmer, Grundy County, Tennessee

October 14, 1983

Sketch Not Drawn to Scale

The accident site could not be investigated and this sketch was made through information provided by mine employees. All positions are approximate.

## COMMENTARY

On October 14, 1983, two work crews entered the mine portal at 4:00 a m to begin a normal coal-producing shift. It could not be determined if they were accompanied by a supervisor as several conflicting testimonies were given as to the supervision at this mine. The work crews were transported to the two working sections, one advancing and one retreating, in rubber-tired cars pulled by battery-powered tractors, and they arrived at the working sections about 4:30 a m. Since the sections were not named or numbered, the section involved in the accident shall be referred to as the advancing section.

Six handloaders were working on the advancing section this day and each man loaded six 2½ ton cars before the shift was over. Cars were spotted by James Borne, "Bunch" tractor operator, who also gathered the loaded cars into trips of four for transport to the surface. James Luke McCarver (victim), haulage tractor operator, had pulled eight trips to the surface from the advancing section. About 12:30 p m. McCarver started for the surface with his ninth and final coal trip.

The handloaders drilled, charged and shot the faces, before gathering at the mantrip to leave the mine. They estimated they were about 20 minutes behind McCarver when they started toward the surface. After traveling a few hundred feet the crew began to smell smoke like "burning rubber". They stated they were unconcerned as the power cable to the section would often overheat and give off a similar smell. About 500 to 600 feet outby the faces, the mantrip came upon the trip of cars McCarver had been pulling, stopped in the roadway. James Borne, operating the mantrip tractor, stopped and waited a few minutes for McCarver to move. Borne and the others could hear McCarver's tractor still running. After a short time, Borne, wondering what was wrong, told the crew that he was going to check on McCarver. Borne crawled along the left side of the cars and found McCarver lying on his right side next to the trip between the second and third cars. McCarver was bleeding from the head and nose and did not appear to be breathing. Borne called out, "Come quick boys, Luke's hurt bad", and the rest of the crew came to his assistance.

Dennis Minton, handloader, checked McCarver and found no pulse or sign of life. Borne crawled to McCarver's tractor and found it turned into the gobbed material along the right rib. The tractor was energized and the tires were still spinning on the bottom which was causing the smoke and burning smell. According to Borne, this tractor had a foot control tram pedal and it was stuck down in high tram. To stop the tractor he pulled the pedal up by hand. At this time, Hoyt Boston, handloader, began crawling toward the surface to get help. Dennis Minton, Anthony Cribbs, Randall Boston and Rick Thacker, all handloaders, moved McCarver away from the coal cars and uncoupled them from McCarver's tractor. Borne then pulled the cars out of the roadway with his tractor. Borne then tried to tram McCarver's tractor out of the roadway but the batteries were so weak it would not pull away from the gob. Martin Minton, haulage tractor operator from the retreating section, had reentered the mine to search for McCarver and had arrived at the accident scene. He helped push McCarver's tractor out of the roadway while Borne steered. With the roadway cleared, the crew placed McCarver in the mantrip car behind Borne's tractor and removed him from the mine. They arrived at the surface about 2:00 p m. An ambulance arrived a short time later and called for the County Coroner, who pronounced McCarver dead about 3:00 p m.

## DISCUSSION AND EVALUATION

1. While attempting to make an investigation of this accident, MSHA inspectors were denied entry to the mine by William H. Crabtree, mine superintendent. Events leading up to and including the actual investigation of the accident are briefly described in the following text:

On October 14, 1983 at 5:30 p m, Max H. Condra, Sr., Coal Mine Inspection Supervisor (Jasper, TN) was informed of a fatal mining accident through a casual conversation with friends. The company where the victim was employed had not filed a Legal Identity form or other plans with MSHA, and was determined to be an illegal operation.

On Wednesday, November 30, 1983, Condra and Ed Morgan, Special Investigator, (Barbourville District Office) arrived at the M & W Coal Company, Inc. mine at 6:36 a m and informed Crabtree that they were there to conduct an accident investigation. Crabtree denied them entry to the mine based on a prior legal decision involving Crabtree Coal Company not falling under MSHA's jurisdiction. Condra issued a 104-a citation for denial of entry and when Crabtree refused to comply, Condra issued a 104-b order for failure to comply with the citation. Condra and Morgan returned to headquarters and legal proceedings were started to gain access to the mine.

On December 5, 1983, U. S. District Judge H. Ted Milburn ruled that M & W Coal Company, Inc. did fall under MSHA's jurisdiction and ordered the operator to allow entry to the mine. On this same date, December 5, 1983, representatives of MSHA were informed by the attorney for M & W Coal Company, Inc. that the mine had been closed, all equipment had been withdrawn and all employees had been terminated.

All information pertaining to this accident and included in this report was obtained through personal interviews with former M & W Coal Company, Inc. employees either at their homes or at the MSHA field office in Jasper, TN. The mine operator did not participate in the investigation and provided no statements and little information.

2. It could not be determined if any supervisory personnel worked in the underground areas of this mine. Several employees interviewed stated that Gary Turner was their foreman. Turner stated that he was only a utility man, did not have a mine foreman's certification, and served in no supervisory capacity. Other employees stated that William H. Crabtree, mine superintendent, was the only supervisor present but he did not enter the mine this shift.

3. There were no witnesses to the accident. The general consensus of the employees interviewed was that McCarver's hat had bounced or been knocked off his head and had fallen under the end of the first car. This caused his cap lamp cord to pull him from the deck of the tractor. McCarver's hat and cap lamp headpiece were found crushed under the cars and were smashed into the bottom . Martin Minton and Gary Turner stated it was common for a tractor operator to lose his hat while tramming on the roadways due to the constant bouncing.

4. It appeared that McCarver's injuries were suffered by being run over by the first and second cars of the trip. Hair and blood were found on the front ends of both cars and the victim was lying alongside the coupling of the second and third cars. The cause of death was not officially determined as an autopsy was not performed.

The condition of the roadway in the accident area could not be determined by the testimony. Three different descriptions prevailed throughout the interviews and are as follows:

The roadway was straight, dry and fairly level; a small dip or offset was present in the floor of the roadway at the scene of the accident which could have bounced McCarver out of the deck of the tractor or could have caused his hat to bounce off his head; a slight rise was present in the area of the roadway and the accident occurred at or near the top. All witnesses stated that the roof was even and consistent through this area; one witness stated that roof bolts installed against wooden half headers were present. They stated that no evidence existed that McCarver's head had struck the half header.

The battery powered tractor operated by the victim continued to tram after he had fallen from the operator's deck. According to testimony, this tractor was equipped with a foot operated tram control pedal which should deenergize the tram motor. If the controller had worked properly and the roadway was level or slightly uphill, as has been previously discussed, the tractor may have stopped when McCarver fell off causing no injuries or only minor injuries. The tractor continued to tram causing the first two cars to strike or run over McCarver.

James Borne stated that he was the first man to the tractor after the accident and that it's wheels were still spinning. He said the foot tram pedal was stuck down on what appeared to be "third point" (high tram) and that he reached down and pulled the pedal up to shut the tram motor controller off. Borne trammed the tractor out of the roadway but stated that he could not tell if the controls were operating properly because the batteries were weak. He went on to say that sometimes weak batteries made the controls act abnormally. It could not be determined who later removed the tractor from the mine. The employees interviewed declined to answer when asked if this tractor was provided with a "panic bar" or other devices designed to quickly deenergize the machine. Conflicting testimony was provided by 2 employees who stated that the tractor involved in the accident was provided with hand operated tram controls.

When the on-site investigation was conducted by MSHA inspectors, the tractor involved in the accident and all other equipment, had been removed from mine property. On December 19, 1983, it was requested of Geary Dillon, Jr., attorney representing M & W Coal Company, Inc. that the tractor involved in the accident be made available for inspection. On that same day, Dillon informed members of the investigating team by telephone that this tractor had been leased to M & W Coal Company, Inc. and had since been returned to the lessor. He did not know the name of the lessor or the whereabouts of the tractor.

According to testimony of the employees interviewed, no training of any type had ever been offered or given by M & W Coal Company, Inc.. Several employees stated they had been employed by this company from one to three years. No training records were offered by the company.

## FINDING OF FACT

1. The mine operator failed to notify the MSHA District or Subdistrict office having jurisdiction over the mine of the occurrence of a fatal accident, a violation of Section 50.10, CFR.

2. The mine operator failed to submit the required MSHA Mine Accident, Injury and Illness report, Form 7000-1, to the MSHA Subdistrict Office, a violation of Section 50.20, CFR.

3. The mine operator failed to submit the required MSHA 7000-2 Quarterly Employment and Coal Production Form to the MSHA Health and Safety Analysis Center in Denver, Colorado, a violation of Section 50.30, CFR.

4. The mine operator did not have an MSHA approved plan containing programs for training new miners, training newly-employed experienced miners, training miners for new tasks, and annual refresher training, a violation of Section 48.3, CFR.

## CONCLUSION

An accurate and thorough investigation to determine the cause of the accident could not be conducted due to the denial of entry to the accident scene and equipment involved. Therefore, this conclusion is based on the information obtained from personal interviews from the mine employees. There were no eyewitnesses to the accident.

The accident occurred when James Luke McCarver (victim) fell or was pulled from the operator's compartment of the battery-powered tractor he was operating. The tractor contineud to tram pulling two loaded rubber tired trailers over the victim, inflicting the fatal injuries.

Kenneth T. Howard
Kenneth T. Howard, Acting District Mgr.

Max H. Condra Sr
Max H. Condra, Sr., Supervisory Coal Mine Safety and Health Inspector

John E. Weekly
John E. Weekly, Subdistrict Manager

Joseph W. Pavlovich
Joseph W. Pavlovich, Mine Safety and Health Specialist (Staff Assistant)

Data Sheet

U.S. Department of Labor
Mine Safety and Health Administration

Section A—Victim Data

1. Name
James Luke McCarver

2. Sex
☒ Male ☐ Female

3. Social Security Number
414-11-8172

4. Age
19

5. Job Classification
Haulage Tractor Operator

6. Experience at this Classification
2 years

7. Total Mining Experience
2 years

8. What activity was being performed at time of accident?
Haulage Tractor Operator

9. Victim's Experience at this Activity
2 years

10. Was victim trained in this task?
No record of formal training available

| Section B—Victim Data for Health and Safety Courses/Training Received *(related to accident)* | Date Received |
|---|---|
| 11. Unknown | |
| 12. | |
| 13. | |
| 14. | |

Section C—Supervisor Data *(supervisor of victim)*

15. Name
Unknown

16. Certified
☐ Yes ☐ No

17. Experience as Supervisor

18. Total Mining Experience

| Section D—Supervisor Data for Health and Safety Courses/Training Received *(related to accident)* | Date Received |
|---|---|
| 19. Unknown | |
| 20. | |
| 21. | |
| 22. | |

23. When was the supervisor last present at accident scene prior to the accident?
Unknown

24. What did he do when he was there?

25. When was he last in contact with the victim?

26. Did he issue instructions relative to the accident?

27. Was he aware of or did he express an awareness of any unsafe practice or condition?

Special Data Sheet

U.S. Department of Labor
Mine Safety and Health Administration

Section A—Information Required in Electrical Accident Reports

1. Voltage of Circuit Involved

2. Voltage to Which Victim was Exposed

3. Type of Supply Circuitry (trolley wire, portable rectifier, wye connected secondary, delta connected secondary)

4. Type, Size and Insulation Rating of Conductor Involved

5. Electrical Protection for Circuit

6. Ground Fault Trip Value (3 phase only)

7. Wiring Diagram of Circuit Involved (attach separate drawing)

8. Condition of Mine Floor

9. Was victim wearing rubber boots?
☐ Yes ☐ No

9a. Condition of Boots

10. Was victim wearing gloves?
☐ Yes ☐ No

10a. Type

10b. Condition

11. Type of Grounding for Equipment

Section B—Information Required in Accidents Involving Equipment

12. Name of Manufacturer of Machine Involved
Unknown

13. Model, Approval Number and Type of Machine
Unknown

14. Machine Voltage
Unknown

15. Did design of machine contribute to accident?
☐ Yes ☐ No Unknown

16. Did maintenance deficiencies contribute to accident?
☐ Yes ☐ No Unknown

17. Name of official responsible for maintenance of equipment.
Unknown

18. Experience of Operator
Unknown

19. Was machine being operated within safe limits of its capability? (if no, explain why)
☐ Yes ☐ No Unknown

Section C—Remarks

The above information could not be determined.

The battery powered tractor involved and the accident scene could not be examined due to the operator's denial of entry.

## APPENDIX

The following is a list of persons furnishing information and/or present during the investigation:

### M & W Coal Company, Inc. Officials

| | |
|---|---|
| Geary Dillon, Jr. | Attorney |
| Ray Mosely | Attorney |

### M & W Coal Company, Inc. Employees

| | |
|---|---|
| Gary Wayne Turner | Utility Man |
| Martin Minton | Tractor Operator |
| James Borne | Tractor Operator |
| Dennis Ray Minton | Coal Loader |
| Hoyt Boston | Coal Loader |
| Ricky Thacker | Coal Loader |
| Claude Anthony Cribbs | Coal Loader |

### Mine Safety and Health Administration

| | |
|---|---|
| Joseph W. Pavlovich | Mine Safety and Health Specialist (Staff Assistant) |
| Max H. Condra, Sr. | Supervisory Coal Mine Safety and Health Inspector |

The CHAIRMAN. How many illegal mines are there in your area of Kentucky?

Mr. LAYNE. Well, there have been within a 75-mile radius of the district office, as many as 100 illegal operations.

The CHAIRMAN. What is being done about them?

Mr. LAYNE. What is being done?

The CHAIRMAN. Yes.

Mr. LAYNE. Nothing.

The CHAIRMAN. Are they dangerous?

Mr. LAYNE. Very dangerous.

The CHAIRMAN. Have you been supported by Mr. Spicer and other district officials for trying to do your job?

Mr. LAYNE. Absolutely not.

The CHAIRMAN. Have your evaluations been downgraded?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. And is this exhibit an example of that?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. What was downgraded?

Mr. LAYNE. Every time we have a very serious violation such as this one, an inspector recommends a willful or nonwillful violation, and then it is approved or disapproved by his supervisor. Then it comes to Special Investigations, where we approve it or disapprove it. And then it goes to the District Manager.

In this case, you can see that the inspector and supervisor said it was a nonwillful violation. I said it was a possible willful, and Jerry Spicer overrode my possible willful violation review.

[The review referred to follows:]

WILLFUL VIOLATION REVIEW

MSHA Office Barbourville, Ky.
Mine I.D. 15-00237
Mine Name No. 1 Mine
Company New Hignite Coal Co., Inc.
Location Middlesboro, Bell Co., Ky.

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| | | | | |
|---|---|---|---|---|
| 104(b) | Order of Withdrawal | ☒ | No. 0991490 | Dated 6-23-80 |
| 104(d)(1) | Citation | ☐ | No. | Dated |
| 104(d)(1) | Order of Withdrawal | ☐ | No. | Dated |
| 104(d)(2) | Order of Withdrawal | ☐ | No. | Dated |
| 104(e)(1) | Order of Withdrawal | ☐ | No. | Dated |
| 104( )(2) | Order of Withdrawal | ☐ | No. | Dated |
| 104(f) | Order of Withdrawal | ☐ | No. | Dated |
| 104(g)(1) | Order of Withdrawal | ☐ | No. | Dated |
| 107(a) | Order of Withdrawal | ☐ | No. | Dated |

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District 7 Office

The above action has been reviewed and determined to be:

☐ Possible Willful Violation - forward to Special Investigator
☒ Nonwillful Violation - forward to files (District Office)

Date 6-23-80 Initial
(Inspector)

Date 6-25-80 Initial CHS
(Supervisor)

The above action has been reviewed and determined to be:

☒ Possible Willful Violation - forward to District/Subdistrict Mgr.
☐ Nonwillful Violation - forward to files (District Office)

Date 7-11-80. Initial ← Larry [illegible]
(Special Investigator)

The above action has been reviewed and determined to be:

☐ Possible Willful Violation
☒ Nonwillful Violation - forward to files (District Office)

Date 7-18-80 Initial ← Jerry [illegible]
(District/Subdistrict Mgr.)

To: Assistant Administrator, Coal Mine Health and Safety

Based on the above review, a Special Investigation is being conducted for possible willful violation.

The **Chairman**. Have you been ordered to leave mines you were inspecting?

Mr. **Layne**. Yes, sir.

The **Chairman**. And what are examples of that?

Mr. **Layne**. When I first went to Barbourville in 1977, I went to Shamrock Number 18 Mine, to travel with another inspector and train him, because I have six years' past experience as a supervisor.

It was about an eight-section mine. After one section, I think we had two or three closure orders and about 20 citations. After that, I was told not to go back to that mine.

Another instance was at National Mines in the summer of 1977; the same thing occurred.

The **Chairman**. Have you been prevented from opening criminal investigations?

Mr. **Layne**. Well, I recommend them to the District Manager, through my supervisor to the District Manager, and the District Manager is the only one that can open a criminal investigation.

I have recommended numerous investigations, and they have all been denied.

The **Chairman**. Have your reports of investigations been changed?

Mr. **Layne**. Yes, sir.

The **Chairman**. And is this an example of that? (Handing document.)

Mr. **Layne**. Yes, sir, this is one of them.

The **Chairman**. Would you just point out where your report was changed?

Mr. **Layne**. There was an ignition that occurred in this mine, Matthews Mine Consolidation Coal Company. During the investigation of the ignition—this is a large gassy mine, by the way—during the investigation, I found out that the machine operators had never been provided with hand-held methane detectors. I included that in my report, and when it went through Ken Dixon's office, that statement was deleted.

The **Chairman**. So you are of the conclusion, then, that it was changed by Ken Dixon to eliminate the fact that the machine operators never had methane detectors; is that correct?

Mr. **Layne**. That is correct.[1]

The **Chairman**. Have there been a large number of mine fatalities in District 7?

Mr. **Layne**. Yes, sir. In the last 15 or 20 years, we have led the nation in mine fatalities and major accidents.

The **Chairman**. The total number for District 7 that I have here is 196 from 1978 through 1986. Does that sound correct?

Mr. **Layne**. Sir, I do not have those figures.

The **Chairman**. I will include that as part of the record.

[The accident classification/year report follows:]

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[1] *See* pgs. 589 to 597.

DISTRICT 7

| ACCIDENT CLASSIFICATION/YEAR | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | TOTAL |
|---|---|---|---|---|---|---|---|---|---|---|
| ELECTRICAL | 3 | 2 | 3 | 2 | 1 | 4 | 1 |  | 2 | 18 |
| EXPLODING VESSEL UNDER PRESSURE |  |  |  |  | 1 |  |  |  |  | 1 |
| EXPLOSIVES AND BREAKING AGENTS |  |  | 4 | 1 | 3 |  | 1 | 4 |  | 13 |
| FALLING/ROLLING/SLIDING MATERIAL |  |  |  |  | 1 |  |  | 1 |  | 2 |
| FALL OF FACE/RIB/SIDE/HIGHWALL | 2 | 3 | 4 |  |  |  |  | 1 | 1 | 11 |
| FALL OF ROOF | 1 | 11 | 4 | 8 | 11 | 3 | 14 | 2 | 4 | 58 |
| FIRE |  |  |  |  |  |  |  |  |  | 0 |
| HANDLING MATERIAL |  |  |  |  |  |  |  |  |  | 0 |
| HAND TOOLS |  |  |  |  |  |  |  |  |  | 0 |
| POWERED HAULAGE | 8 | 7 | 8 | 5 | 5 | 3 | 7 | 3 | 3 | 49 |
| HOISTING |  | 1 |  |  |  |  |  |  |  | 1 |
| IGNITION/EXPLOSION OF GAS/DUST |  |  |  | 22 | 1 |  |  |  |  | 23 |
| INUNDATION |  |  |  | 3 |  |  |  |  |  | 3 |
| MACHINERY | 1 | 2 | 1 | 1 | 2 |  | 2 | 1 | 1 | 11 |
| SLIP/FALL OF PERSON |  | 3 |  |  |  |  |  | 1 | 1 | 5 |
| OTHER |  |  |  |  |  |  |  |  | 1 | 1 |
| TOTAL | 15 | 29 | 24 | 42 | 25 | 10 | 25 | 13 | 13 | 196 |

The CHAIRMAN. Did you conduct a criminal investigation of the Berger Number 2 accident?

Mr. LAYNE. I participated in that investigation.

The CHAIRMAN. When did that happen?

Mr. LAYNE. That happened in Harlan County, Kentucky.

The CHAIRMAN. And what kind of accident was it?

Mr. LAYNE. It was as massive roof-fall. They were mining with a Wilcox continuous miner, without the use of roof bolts, strictly on post, and a massive roof-fall occurred and killed four men.

The CHAIRMAN. Did you conduct a criminal investigation?

Mr. LAYNE. No, sir, I did not conduct it.

The CHAIRMAN. Well, do you know whether one was conducted that was presented to a grand jury?

Mr. LAYNE. Yes, sir. It was conducted by another investigator, and went to the grand jury.

The CHAIRMAN. And do you remember when that was?

Mr. LAYNE. I think it was in October 1985.

The CHAIRMAN. Do you know what the status of the case is now?

Mr. LAYNE. It is at the U.S. Attorney's Office in Lexington.

The CHAIRMAN. What has taken so long?

Mr. LAYNE. I have no idea.

The CHAIRMAN. What do you think we can best do to increase mine safety?

Mr. LAYNE. The first thing you have to do is to improve the quality, starting with District Managers, Sub-District Managers, and supervisors.

We have got to get some people that are more qualified and knowledgeable in coal mining techniques and experience. We are extremely lacking.

The CHAIRMAN. Do you think that criminal investigations of mine fatalities should be part of a separate entity outside of the agency?

Mr. LAYNE. They certainly should. It is the only way we can do an honest job.

The CHAIRMAN. Thank you.

Mr. Paul Scaff, welcome. How old are you?

Mr. SCAFF. Fifty-five, sir.

The CHAIRMAN. And what is your present employment?

Mr. SCAFF. I am with the Department of Defense, the U.S. Navy, with the naval re-work facility in Jacksonville, Florida.

The CHAIRMAN. How long have you been employed there?

Mr. SCAFF. Since February of 1981.

The CHAIRMAN. Prior to that, were you with the Mine Safety and Health Administration?

Mr. SCAFF. Yes, sir.

The CHAIRMAN. And in what capacity were you employed?

Mr. SCAFF. I was employed as an electrical engineer out of District 7 and stationed in Barbourville, Kentucky. From that office, then, I served the entire district, which represented Southeastern Kentucky, all of Tennessee, and Alabama.

The CHAIRMAN. When did you start working there?

Mr. SCAFF. This was in March of 1976.

The CHAIRMAN. And when did you leave?

Mr. SCAFF. In February of 1982.

The CHAIRMAN. And why did you leave?

Mr. SCAFF. Due to the inability to appropriately perform the job which I was being paid to do.

The CHAIRMAN. While you were an Inspector in District 7, did you feel you were supported by your superiors in your attempt to do your job?

Mr. SCAFF. No, sir.

The CHAIRMAN. Did your superiors favor the large coal companies more than the small companies?

Mr. SCAFF. Very definitely, yes.

The CHAIRMAN. And did you have a problem when you inspected the National Mining Company?

Mr. SCAFF. Yes, sir, I did.

The CHAIRMAN. What happened when you tried to inspect one of its mines?

Mr. SCAFF. This originated from a complaint by the Union that they were not getting appropriate electrical inspection. I, being assigned to the mines, met with the Sub-District Manager, Mr. Gene Greenlee, and we proceeded to the mines. We met with the company officials and the safety directors and then the Union people, and then began an investigation.

The first day, we travelled in the areas in which they wanted me to travel, and things looked real good; I only issued seven minor citations that day. Returning the next day, I picked the area in which I wanted to inspect, and that day I issued 39 citations, most of which were major violations.

The CHAIRMAN. Now, was there a note on your desk when you got back to your office?

Mr. SCAFF. Yes, sir. The mines were located about three hours' driving time from my office, and by the time I arrived back at my office that evening, there was a note on my desk, telling me that Mr. Greenlee did wanted me off of the investigation and for me not to go back to the mines.

The CHAIRMAN. That is Exhibit A, is that right?

Mr. SCAFF. Yes, sir.

The CHAIRMAN. It says on there, "Paul, Gene Greenlee wants you taken off the investigation at National Mine."

So you were taken off the inspection because you issued citations?

Mr. SCAFF. Yes, sir.

The CHAIRMAN. Who was Mr. Greenlee?

Mr. SCAFF. Mr. Greenlee was the Sub-District Manager of the Hazard Field Office.

The CHAIRMAN. And who was Mr. Stanford?

Mr. SCAFF. Mr. Stanford was my immediate supervisor, first-line.

The CHAIRMAN. He is the one that actually wrote the note; is that correct?

Mr. SCAFF. Yes, sir.

The CHAIRMAN. So the company apparently complained to Mr. Greenlee, and then what happened?

Mr. SCAFF. It appeared that Mr. Greenlee then called my immediate supervisor and had my work assignment changed.

[Information supplied for the record follows:]

Paul:

Gene Greenlee Wants you taken off of the inspections at National Mine. Stay in until you Complete your (BBA) inspection reports for that Mine Fill out all your inspectors Statements for the (103G) attach them to your citations send them to Hindman.

The following electrical equipment in enclosed Areas are to be classified as Class II Div. 2 and not "Class one" "Dist 7. Policy". Draw off tunnels, top and bottom of silos, dry coal prep plants and coal handling facilities. Dist Policy & National Policy Will also accept Article (250-58) for grounding electrical equipment mounted on the steel structure of a building or structure.
"See the attached" Page (1)

Jerry Standafer
3-16-81

I mailed that to Gene today.

**U. S. Department of Labor**

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

MSHA

JAN 22 1982

RECEIVED
Barbourville, Ky.
District 7 Office

January 19, 1982

MEMORANDUM FOR: J. L. SPICER
District Manager

FROM: HERSCHEL H. POTTER HHP/ lg
Chief, Division of Safety

SUBJECT: Code-a-phone Message No. 11

The following message was received in this office.

"I want to report a mine that is in Whelan, KY. It's owned by the National Mines Corp. The mines are Stinson mines numbers 1, 2, 3, 4 and 5. If I tell you exactly which mine I work in they'll fire me. The mine is full of wide areas, we had a feller killed with a rock fall. This feller was fending (?) without jacks and the company makes you roof bolt without jacks. But the roadways are 30' to 35' wide in places. And I think that's too wide to be safe and I want it to be checked. Then right over the hill we had an explosion last month and it's due because of the way they shot coal with powder and we do the same thing when we shoot with powder. We jump from hole to hole and jump the wires over with blasting caps, and the places ain't rock dusted, not the sections and nowhere in the mine is the roof rock dusted and the return airways ain't rock dusted at all. And if you take rock dust samples you'd know that. If we had an explosion or trouble, you'd never get out of the mine. The way we go to the sections, you go thru intake then return then intake then return. And the intakes and returns is only separated by conveyor belts cut and nailed to roof bolts. They just cut them in strips and nail it to the roof bolts. We had a federal man come up there one time from Barbourville, Kentucky but he evidently didn't know that the boys of Hazard from MSHA was bought off because after about 3 days of writing electrical violations he was took out and they tore him up. And some of them he wrote was outside, he never got to check anything electircal inside, and he was just working on the starting boxes and electrical things outside. I think his name was Cass (Calf?) and he was doing a good job but then the company had him bought off and he had to leave Some electrical things that they got, nothings permissible. The tractors fuses all the tractor's fuses are wired over, and you hit the pedal and it jumps straight into third point, it don't go thru the first point it goes straight to third point. All the starting boxes is hot when you open the doors to put the breakers in, you got live wires right there where you could slip and fall, especially in the snow, slip and fall and get electrocuted. Of course you don'

Code-a-phone Message No. 11
Page 2

do nothing with the electrical because the company's got their electrical bought off. And then that explosion had me worried a lot, especially with the escapeways being intake and return and all mixed up, but the ventilation ain't right. You can't get nowhere, the air we need. And they don't have any curtains half the time, and I'm just afeared that the mine is just going to be blowed up. There's also loose roof bolts, and loose roof bolts out all up and down the roadways to the sections, and roof cracks and the company won't strap them. And we drive in places 30' wide and I'm just afraid that it's going to fall in and kill somebody. If you can send somebody in to check it but if you send those local fellers from Hazard, nothing will happen."

Please investigate.

The CHAIRMAN. Did you have another similar experience when you closed down the haulage system of another large company?

Mr. SCAFF. Yes, sir, I did.

The CHAIRMAN. Which company was that?

Mr. SCAFF. This was the Eastover Mining Company at the Brookside operation, in Harlan County, Kentucky.

The CHAIRMAN. And were you called into the District Manager's office?

Mr. SCAFF. Yes, sir.

The CHAIRMAN. Who was the District Manager?

Mr. SCAFF. Jerry Spicer.

The CHAIRMAN. Jerry Spicer. And were you told why you were being called in?

Mr. SCAFF. No, sir. I was given no advance notice of any such meeting or what the subject matter would be.

The CHAIRMAN. Who was there?

Mr. SCAFF. When I got into the meeting, then Mr. Spicer was there, along with Mr. Norman Yaborough, who is president of Eastover Mining Company, and five of his supervisory staff.

The CHAIRMAN. Did Mr. Spicer say anything?

Mr. SCAFF. No, sir, he did not—only—well, let me rephrase that, please—not before the Eastover Mining Company was allowed to, you could almost say, badger me as an inspector and as a person. This resulted out of issuing about 50 citations in one of their mines in which a fatal had occurred. After the fatal, I issued numerous electrical citations, many of which involved their transportation and material haulage equipment.

The CHAIRMAN. Well, now, did Mr. Spicer defend you?

Mr. SCAFF. No, sir.

The CHAIRMAN. What happened after you closed it down?

Mr. SCAFF. I issued 107(a) orders on their track system, and after issuing the 50 citations, I was taken off the investigation. There were——

The CHAIRMAN. So your supervisor vacated your order?

Mr. SCAFF. I really cannot say, Senator Kennedy, who vacated the orders. I do not have knowledge of it.

The CHAIRMAN. Was a man killed shortly after that on the haulage system?

Mr. SCAFF. Yes, sir.

The CHAIRMAN. Did you also issues citations at the Grundy Number 21 mine in Whitwell, Tennessee?

Mr. SCAFF. Yes, I did.

The CHAIRMAN. Were they also changed?

Mr. SCAFF. Again, I do not have knowledge of what happened to the citations. I did not see the——

The CHAIRMAN. But were they altered or changed; do you know whether they were altered or changed?

Mr. SCAFF. No. I cannot say.

The CHAIRMAN. You just do not know what happened to them?

Mr. SCAFF. I do not know. I never saw them again after I issued them. I was not allowed to return to the mines.

The CHAIRMAN. You were not allowed to return to the mines after that?

Mr. SCAFF. Right, yes.

The CHAIRMAN. Is it legitimate for us to conclude that the District Manager moved you off your job because you were issuing these citations for safety?

Mr. SCAFF. Well, it would either have to be through him or through my immediate supervisor.

The CHAIRMAN. Well, one of the two of them.

Mr. SCAFF. Yes, sir.

The CHAIRMAN. You were moved off your job after issuing a series of citations.

Mr. SCAFF. Yes, sir.

The CHAIRMAN. And in at least one case here, there was a loss of life subsequent to that.

Why did you decide to resign from MSHA?

Mr. SCAFF. Well, I guess I was being penalized for issuing citations and attempting to afford safer electrical systems for the mines. I was assigned to smaller mines and mines with very small coal, mines with long driving times, very undesirable working conditions as far as I was concerned as an electrical engineer.

The CHAIRMAN. Do you know Larry Layne?

Mr. SCAFF. Yes, sir.

The CHAIRMAN. And what is your opinion of him as an agency employee?

Mr. SCAFF. Larry is one of the most qualified inspectors I have had the privilege to work with—very conscientious and very dedicated in safety.

The CHAIRMAN. How do you think mine safety and health enforcement can be improved?

Mr. SCAFF. Well, due to the numerous times in which the citations which I issued, the report was received back to the district office prior to me getting to the office, it looked like there were too many direct channels from the coal industry back into the mine safety management. I would think that this direct avenue for the coal operators to control mine safety management should be removed.

The CHAIRMAN. That is very helpful.

Now, Mr. Helton, what is your present position?

Mr. HELTON. I am the roof control specialist in the Harlan Field Office.

The CHAIRMAN. And how long have you been an investigator in that office?

Mr. HELTON. I have been there since 1978.

The CHAIRMAN. And do you have a family?

Mr. HELTON. Yes, I do.

The CHAIRMAN. Have you been supported by your district officials in the performance of your duties?

Mr. HELTON. No, sir, I have not.

The CHAIRMAN. And have you been able to perform your duties as you were trained to do so and as the law requires?

Mr. HELTON. No, sir.

The CHAIRMAN. Are the inspections of large coal companies, intended by district officials to be the same as inspections of small coal companies?

Mr. HELTON. No, sir.

The CHAIRMAN. What is the difference?

Mr. HELTON. With the larger coal companies, I have been told, "This guy, he does a good job, so give him every break you can." And with the little coal operator, they say, "Go out there and burn him up"—in a sense, you know; in a roundabout way, that is what they mean.

The CHAIRMAN. Is there high unemployment in your area?

Mr. HELTON. Yes, sir, there is.

The CHAIRMAN. Are miners afraid to complain?

Mr. HELTON. Yes, sir, they are.

The CHAIRMAN. Why are they afraid to complain?

Mr. HELTON. I had one individual that I picked up one day. He was hitch-hiking, and he was very black from the coal dust. All you could see was the whites of his eyes and his teeth. I picked him up and gave him a ride, and he informed me of several safety violations at his mine, because he knew me; the man was from my home-town. And he said, "Whatever you do, do not ever make mention of this in the Harlan Field Office, or make mention of my name." He said, "I will not have a job if you do."

So I did not make mention of his name, and I reported it to my supervisor, and he said he would take care of it.

The CHAIRMAN. Have you tried to tell miners of their rights under the law?

Mr. HELTON. Yes, sir, I have. We have a little pamphlet that is a hand-out that we give to miners, advising them of their rights as to being afforded a safe workplace and a safe environment to work in. And for the benefit of those coal miners—we have some who cannot read, and that is no reflection on them—and I always read excerpts from these rights to the miners. And I was informed by two supervisors that I was not to do that during safety conferences at the mine; I was not to inform the coal miners of their rights.

The CHAIRMAN. Who criticized you?

Mr. HELTON. Norris Ferguson. He is a third-line supervisor in the Sub-District Office at Barbourville.

The CHAIRMAN. What did he say to you, if you remember?

Mr. HELTON. We were having a conference over one of the coal operators—it was just me and him talking together, and we were going over my performance standards. I told Mr. Ferguson that I would go over the miners' rights booklet with some of the miners on my inspections. And he said, "Well, that is one of your problems, Paul. You do not need to do that." He said, "That is not your job to do that."

The CHAIRMAN. Was Mr. Spicer supportive of you when he was District Manager?

Mr. HELTON. No, sir.

The CHAIRMAN. Was the Karst-Robbins Coal Company one of the mines you inspected?

Mr. HELTON. Yes, sir.

The CHAIRMAN. Did you issue citations and a closure order?

Mr. HELTON. Yes, sir.

The CHAIRMAN. And is this the citation and order? (Handing document.)

Mr. HELTON. Yes, sir, it is.

The CHAIRMAN. And when was that?

Mr. HELTON. This was on the fifth and the eleventh of 1983. I issued it to Don Green at the Karst-Robbins Coal Company. It is a 107(a) order.

The CHAIRMAN. Why did you issue that order?

Mr. HELTON. Because there were five misfires where they had taken the explosives to grade the belt entry of this mine, and there were five shots that had not been detonated underneath the belt line that they had put in. And I went up through there, and I started crawling the belt line, and there were from two to four inches of float coal dust, which is like gunpowder, on the mine floor and the roof and ribs, for a distance of 4,000 feet; along with this, the condition of misfired shots.

I issued a 107(a) order, causing all the personnel to be withdrawn from the mine.

The CHAIRMAN. Are those serious problems?

Mr. HELTON. Yes, sir.

The CHAIRMAN. Did the mine company officials become upset?

Mr. HELTON. Yes, sir. After we made the first 4,000 feet, and we withdrew all the men from the mine, I stayed underground with Mr. Green to take the electric detonators from the charged holes. After we did that, we went on outside, and Mr. Karst asked if he could meet with me and my electrical inspector that was travelling with me that day, Mr. Silas Adams. He said he wanted to meet with us up in the office over the shop.

We went up there and talked, and after I had seen Mr. Karst getting upset, I told Silas Adams, who was with me, for us to leave the property, and they could discuss it during a conference with our supervisors as to our action. And Mr. Karst got very upset and angry and started trying to shove me down some steps, about a 30-foot-high flight of steps.

The CHAIRMAN. Did you feel threatened?

Mr. HELTON. Yes, sir, I did.

The CHAIRMAN. Did they complain to Mr. Spicer?

Mr. HELTON. Yes, they did.

The CHAIRMAN. What did he do?

Mr. HELTON. He vacated this order.

The CHAIRMAN. He vacated the order?

Mr. HELTON. He vacated the order.

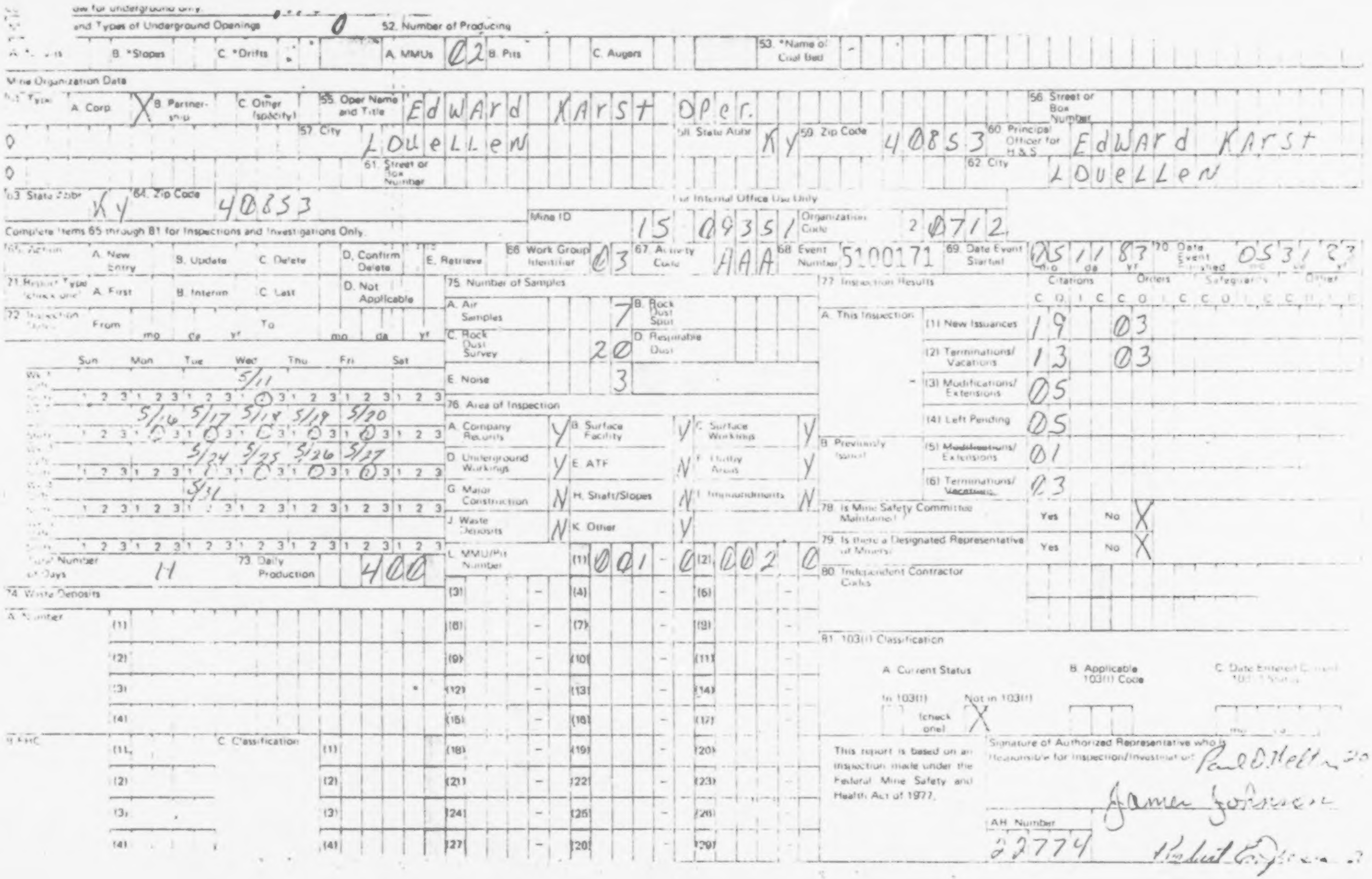
The CHAIRMAN. And were you taken off the inspection?

Mr. HELTON. Yes, I was.

The CHAIRMAN. And was there subsequently a fatal electrocution at the mine?

Mr. HELTON. Yes, sir, there was.

[Information supplied for the record follows:]



...ow for underground only

...and Types of Underground Openings 0

52. Number of Producing

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| A. ... | B. *Stopes | C. *Drifts | A. MMUs | 02 | B. Pits | C. Augers | 53. *Name of Coal Bed - |

Mine Organization Data

54. Type A. Corp ☒ B. Partnership C. Other (specify)

55. Oper Name and Title Edward Karst Oper.

56. Street or Box Number

0 57. City Louellen

58. State Abbr Ky

59. Zip Code 40853

60. Principal Officer for H&S Edward Karst

0 61. Street or Box Number

62. City Louellen

63. State Abbr Ky

64. Zip Code 40853

For Internal Office Use Only

Mine ID 15 09351

Organization Code 2 0712

Complete Items 65 through 81 for Inspections and Investigations Only.

65. Action A. New Entry B. Update C. Delete D. Confirm Delete E. Retrieve

66. Work Group Identifier 03

67. Activity Code AAA

68. Event Number 5100171

69. Date Event Started 05 11 83 (mo da yr)

70. Date Event Finished 05 31 83 (mo da yr)

71. Report Type (check one) A. First B. Interim C. Last D. Not Applicable

72. Inspection Dates From mo da yr To mo da yr

| | Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|---|
| Wk 1 | | | | 5/11 | | | |
| Shifts | 1 2 3 | 1 2 3 | 1 2 3 | 1 [✓ 2] 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| Wk 2 | | 5/16 | 5/17 | 5/18 | 5/19 | 5/20 | |
| Shifts | 1 2 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 2 3 |
| Wk 3 | | | 5/24 | 5/25 | 5/26 | 5/27 | |
| Shifts | 1 2 3 | 1 2 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 2 3 |
| Wk 4 | | | 5/31 | | | | |
| Shifts | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| Wk 5 | | | | | | | |
| Shifts | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |

Total Number of Days 11

73. Daily Production 400

74. Waste Deposits

A. Number (1) (2) (3) (4)

B. FHC (1) (2) (3) (4) C. Classification (1) (2) (3) (4)

75. Number of Samples

| | | | |
|---|---|---|---|
| A. Air Samples | 7 | B. Rock Dust Spot | |
| C. Rock Dust Survey | 20 | D. Respirable Dust | |
| E. Noise | 3 | | |

76. Area of Inspection

| | | | | | |
|---|---|---|---|---|---|
| A. Company Records | Y | B. Surface Facility | Y | C. Surface Workings | Y |
| D. Underground Workings | Y | E. ATF | N | F. Utility Areas | Y |
| G. Major Construction | N | H. Shaft/Slopes | N | I. Impoundments | N |
| J. Waste Deposits | N | K. Other | Y | | |

L. MMU/Pit Number (1) 001 - 0 (2) 002 - 0 (3) - (4) - (5) - (6) - (7) - (8) - (9) - (10) - (11) - (12) - (13) - (14) - (15) - (16) - (17) - (18) - (19) - (20) - (21) - (22) - (23) - (24) - (25) - (26) - (27) - (28) - (29) -

77. Inspection Results

| | | Citations C | O | I | C | Orders C | O | I | C | Safeguards C | O | I | C | Other C | O | I | C |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| A. This Inspection | (1) New Issuances | 19 | | | | 03 | | | | | | | | | | | |
| | (2) Terminations/ Vacations | 13 | | | | 03 | | | | | | | | | | | |
| | (3) Modifications/ Extensions | 05 | | | | | | | | | | | | | | | |
| | (4) Left Pending | 05 | | | | | | | | | | | | | | | |
| B. Previously Issued | (5) ~~Modifications~~/ Extensions | 01 | | | | | | | | | | | | | | | |
| | (6) Terminations/ ~~Vacations~~ | 03 | | | | | | | | | | | | | | | |

78. Is Mine Safety Committee Maintained? Yes No ☒

79. Is there a Designated Representative of Miners? Yes No ☒

80. Independent Contractor Codes

81. 103(i) Classification

A. Current Status In 103(i) ☐ Not in 103(i) ☒ (check one)

B. Applicable 103(i) Code

C. Date Entered Current 103(i) Status mo da

This report is based on an inspection made under the Federal Mine Safety and Health Act of 1977.

Signature of Authorized Representative who is Responsible for Inspection/Investigation Paul D. Helt

James Johnson

AR Number 22774

Robert

Complete below for underground only May 83 15-09351 Karst Collieries Coal Co. Inc. No. 4

51. Number and Types of Underground Openings

A. *Shafts B. *Slopes C. *Drifts

52. Number of Producing A. MMUs 02 B. Pits C. Augers

53. *Name of Coal Bed -- -

Mine Organization Date

54. Type A. Corp. ☒ B. Partnership C. Other (specify)

55. Oper Name and Title Edward Karst Oper.

56. Street or Box Number

57. City Louellen

58. State Abbr Ky

59. Zip Code 40853

60. Principal Officer for H&S Edward Karst

61. Street or Box Number

62. City Louellen

63. State Code Ky 64. Zip Code 40853

For Internal Office Use Only

Mine ID 15-09351 Organization Code 2 0712

Complete Items 65 through 81 for Inspections and Investigations Only.

65. Action A. New Entry B. Update C. Delete D. Confirm Delete E. Retrieve

66. Work Group Identifier 03 67. Activity Code AAA 68. Event Number 5100171 69. Date Event Started 05 11 83 (mo da yr) 70. Date Event Finished 05 31 83 (mo da yr)

71. Report Type (check one) A. First B. Interim C. Last D. Not Applicable

72. Inspection From mo da yr To mo da yr

| | Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|---|
| Wk 1 Date | | | | 5/11 | | | |
| Shift | 1 2 3 | 1 2 3 | 1 2 3 | 1 ② 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| Wk 2 Date | | 5/16 | 5/17 | 5/18 | 5/19 | 5/20 | |
| Shift | 1 2 3 | 1 ② 3 | 1 ② 3 | 1 ② 3 | 1 ② 3 | 1 ② 3 | 1 2 3 |
| Wk 3 Date | | | 5/24 | 5/25 | 5/26 | 5/27 | |
| Shift | 1 2 3 | 1 2 3 | 1 ② 3 | 1 ② 3 | 1 ② 3 | 1 ② 3 | 1 2 3 |
| Wk 4 Date | | | 5/31 | | | | |
| Shift | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| Wk 5 Date | | | | | | | |
| Shift | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |

Total Number of Days 11 73. Daily Production 400

75. Number of Samples

| | | | |
|---|---|---|---|
| A. Air Samples | 7 | B. Rock Dust Spot | |
| C. Rock Dust Survey | 20 | D. Respirable Dust | |
| E. Noise | 3 | | |

76. Area of Inspection

| | | | | | |
|---|---|---|---|---|---|
| A. Company Records | Y | B. Surface Facility | Y | C. Surface Workings | Y |
| D. Underground Workings | Y | E. ATF | N | F. Outby Areas | Y |
| G. Major Construction | N | H. Shaft/Slopes | N | I. Impoundments | N |
| J. Waste Deposits | N | K. Other | Y | | |

L. MMU/Pit Number (1) 001 - 0 (2) 002 - 0 (3) - (4) - (5) - (6) - (7) - (8) - (9) - (10) - (11) - (12) - (13) - (14) - (15) - (16) - (17) - (18) - (19) - (20) - (21) - (22) - (23) -

74. Waste Deposits

A. Number (1) (2) (3) (4)

B. FHC (1) C. Classification (1) (2)

77. Inspection Results

| | | Citations C | O | I | C | Orders C | O | I | C | Safeguards C | O | I | C | Other C | O | I | C |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| A. This Inspection | (1) New Issuances | 19 | | | | 03 | | | | | | | | | | | |
| | (2) Terminations/ Vacations | 13 | | | | 03 | | | | | | | | | | | |
| | (3) Modifications/ Extensions | 05 | | | | | | | | | | | | | | | |
| | (4) Left Pending | 05 | | | | | | | | | | | | | | | |
| B. Previously Issued | (5) ~~Modifications~~/ Extensions | 01 | | | | | | | | | | | | | | | |
| | (6) Terminations/ ~~Vacations~~ | 03 | | | | | | | | | | | | | | | |

78. Is Mine Safety Committee Maintained? Yes No ☒

79. Is there a Designated Representative of Miners? Yes No ☒

80. Independent Contractor Codes

81. 103(i) Classification

A. Current Status In 103(i) ☐ Not in 103(i) ☒ (check one)

B. Applicable 103(i) Code

C. Date Entered Current 103(i) Status mo da yr

This report is based on an inspection made under the Federal Mine Safety and Health Act of 1977.

Signature of Authorized Representative who is Responsible for Inspection/Investigation Paul D. Helton 204

Armer Johnson

U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
MSHA FORM 7000-3a (Jun 78)

(original issue) DATED 05 / 11 / 83 (MO / DA / YR) No 2187997-

☒ SUBSEQUENT ACTION ☐ CONTINUATION ☒ CITATION ☐ ORDER DATE 05 / 12 / 83 (MO / DA / YR) TIME 1800 (24 HR CLOCK)

SERVED TO Don Green OPERATOR Karst Robbins Coal Co. Inc

MINE no. 4 MINE I.D. 15-09351-___ (CONTRACTOR)

JUSTIFICATION FOR ACTION CHECKED BELOW The explosives and detonators along the no. 1 main belt conveyor have been gathered up and stored in separate magazines.

(751306)

☐ EXTENDED TO: DATE __/__/__ (MO / DA / YR) TIME ____ (24 HR CLOCK) ☐ VACATED

☒ TERMINATED ☐ MODIFIED ☐ SEE CONTINUATION FORM

OFFICE USE ONLY
CODES __/__ P__L__ ATD__/__/__
DATE

TYPE OF INSPECTION AAA event. 5100171

SIGNATURE James Johnson 2774 AR

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Section I—Violation Data

1. Type of issuance (check one) Citation ☒ Order ☐ Safeguard ☐
2. Date 05 11 83 (Mo Da Yr)
3. Time (24 hr. clock) 1030
4. Citation/Order Number 2184999
5. Served To Don Green
6. Operator Laurel Robbins Coal Co. Inc.
7. Mine No. 4
8. Mine ID 15-09351 (Contractor)
9. Type of Action 104-d-1
10. Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act C. Part/Section of Title 30 CFR 75.1306-
11a Significant and Substantial (see reverse) ☒
11b. Written Notice ☐
12. Condition or Practice

Explosives and Electric Detonators were not stored properly nor provided with magazines in that, at various locations in the No. 1 Main belt entry the explosives and Detonators were lying together in the same container and in some instances lying out on the mine floor which was damp at various location.
→ The operator had hidden several Explosives and Electric detonators together in the original containers along the ribs in the No. 1 belt entry also.
→ The Operator had also stored in the Return air course approximately 700 feet from No. 1 Charging station Explosives and Electric detonators together in

13. Area or Equipment

a Metal container approximately (15) sticks of explosives and approximately (30) electric Detonators (metal exposed to explosives and Detonators inside metal box.
In the belt entry where explosives and Electric detonators were hidden was an energized 4160 volt power cable. This condition was one of the factors that contributed to the issuance of Imminent Danger
Order No. 2185000 dated 5-11-83

14. Initial Action Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐
15. Citation/Order Number
16. Dated Mo Da Yr
17. Termination Due A. Date 05 11 83 (Da Yr) B. Time (24 hr clock) 1220 C. Signature Paul D. Miller D. AR Number 30420 ☐ See continuation form (MSHA Form 7000-3a)

Section II—Termination Action

18. Action to Terminate

19. Terminated A. Date Mo Da Yr B. Time (24 hr. clock) C. Signature D. AR Number

Section III—Inspector's Evaluation

20. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐

21. Gravity
A. The occurrence of the event against which the cited standard is directed was
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be
No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☒
C. Number of persons who would be affected if the event occurred or were to occur 01

22. Good Faith
A. Failure to abate within the time period given ☐
B. Signature
C. AR Number

Section IV—Automated System Data

23. Type of Inspection (activity code) [illegible]
24. Event Number 5100171
25. Primary or Mill

MSHA Form 7000-3, Apr 82, (revised)

22-883 232

Mine Citation/Order
Continuation

**U.S. Department of Labor**
Mine Safety and Health Administration

1. Dated (original issue) 05 11 83 Mo. Da. Yr. 2. Citation/Order Number 2184999-01

3. Subsequent Action ☒ Continuation ☐ 4. Date 04 12 84 Mo. Da. Yr. 5. Time (24 hr. clock) 1500 6. Served To Don Green

7. Operator Kent Robbins Coal Co. Inc Mine No. 4 8. Mine ID 15-09351- (Contractor)

Justification For Action

Citation No. 2184999 is hereby modified
to read Item (9) 104 a citation
also Item 30, negligence (E) Reckless Disregard
Item 21,A Gravity highly likely.

(Item (9) as suggested by Assessments Office
according to memo by Lawrence)

NOTICE
Notation

9. Extended To ☐ 9a. Date Mo. Da. Yr. 9b. Time (24 hr. clock) 10. Vacated ☐ Terminated ☐ Modified ☒

11. See Continuation Form ☐ 12. Type of Inspection DKK 13. Event Number

14. Signature AR Number

MSHA Form 7000-3a., Apr 82 (revised)

72-883 234

U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
MSHA FORM 7000-3a (Jun 78)

(original issue) DATED 05 / 11 / 83 (MO / DA / YR) No 2159901 - _

☒ SUBSEQUENT ACTION ☐ CONTINUATION ☐ CITATION ☒ ORDER DATE 05 / 12 / 83 (MO / DA / YR) TIME 1800 (24 HR CLOCK)

SERVED TO Don Green OPERATOR ____

MINE no. 1 MINE I.D. _ _ _ _ _ _ _ _ _ _ _ (CONTRACTOR)

JUSTIFICATION FOR ACTION CHECKED BELOW permanent stoppings have been constructed separating the no. 1 main belt conveyor from the return air course.

(75.316)

☐ EXTENDED TO: DATE __ / __ / __ (MO / DA / YR) TIME ____ (24 HR CLOCK) ☐ VACATED

☒ TERMINATED ☐ MODIFIED ☐ SEE CONTINUATION FORM

OFFICE USE ONLY
CODES _/__P_L__ATD__/__/__
DATE

TYPE OF INSPECTION AAA Event. 5100171

SIGNATURE James Johnson 2774 (AR)

Mine Citation/Order

**U.S. Department of Labor**
Mine Safety and Health Administration

Section I–Violation Data

1. Type of issuance (check one) Citation ☐ Order ☒ Safeguard ☐

2. Date [illegible] Mo. Da. Yr.

3. Time (24 hr. clock) [illegible]

4. Citation/Order Number 2189901

5. Served To [illegible]

6. Operator [illegible] Co. Inc.

7. Mine [illegible]

8. Mine ID [illegible] (Contractor)

9. Type of Action [illegible]

10. Violation A. Health ☐ Safety ☐ Other ☐ B. Section of Act C. Part/Section of Title 30 CFR 75.316

11a Significant and Substantial (see reverse) ☐

11b. Written Notice ☐

12. Condition or Practice

No apparent effort was made by the operator [illegible] which had been taken [illegible] by the operator on the No. 1 Main belt line stoppings separating belt entry from the return air course were not rebuilt.

13. Area or Equipment No. 4 [illegible] Coal Co. Inc. Mine.

14. Initial Action Citation ☒ Order ☐ Safeguard ☐ Written Notice ☐

15. Citation/Order Number 2187409

16. Dated 02 08 83 Mo. Da. Yr.

17. Termination Due: A. Date Mo. Da. Yr. B. Time (24 hr clock) C. Signature [illegible] D. Kettin D. AR Number [illegible]

☐ See continuation form (MSHA Form 7000-3a)

Section II–Termination Action

18. Action to Terminate

19. Terminated A. Date Mo. Da. Yr. B. Time (24 hr. clock) C. Signature D. AR Number

Section III–Inspector's Evaluation

20. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☐ E. Reckless Disregard ☐

21. Gravity

A. The occurrence of the event against which the cited standard is directed was
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be
No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☐

C. Number of persons who would be affected if the event occurred or were to occur

22. Good Faith

A. Failure to abate within the time period given ☐ B. Signature C. AR Number

Section IV–Automated System Data

23. Type of Inspection (activity code) 24. Event Number 25. Primary or Mill

MSHA Form 7000-3, Apr 82 (revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

✓

Section I – Violation Data

1 Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐
2 Date 05 11 83
3 Time (24 hr clock) 1010
4 Citation/Order Number 2139902

5 Served To Dan Green
6 Operator Karst Robbins Coal Co. Inc.
7 Mine No. 4
8 Mine ID 15-09351 (Contractor)

9 Type of Action 104-A-
10 Violation A Health ☐ Safety ☒ Other ☐ B Section of Act C Part/Section of Title 30 CFR 75.400
11a Significant and Substantial (see reverse) ☒
11b Written Notice ☐

12 Condition or Practice

Float Coaldust very black in color was allowed to be deposited on Rockdusted surfaces from the No. 1 Return Portal to the No. 1 Battery charging station in the Return air course, 4000 ft in length. Explosives and Electric Detonators stored in a metal box which if stray or active electric current could contribute to an ignition source for the float coal dust.

This condition was one of the factors that contributed to the issuance of Imminent Danger Order No. 2185000 dated 5-11-83, Therefore no abatement time.

13 Area or Equipment

14 Initial Action Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐
15 Citation/Order Number
16 Dated Mo Da Yr

17 Termination Due A Date Mo Da Yr B Time (24 hr clock)
C Signature Paul O. Helton
D AR Number 20426
☐ See continuation form (MSHA Form 7000-3a)

Section II – Termination Action

18 Action to Terminate

JAN 25 1984

19 Terminated A Date Mo Da Yr B Time (24 hr clock) C Signature D AR Number

Section III – Inspector's Evaluation

20 Negligence (check one) A None ☐ B Low ☐ C Moderate ☒ D High ☐ E Reckless Disregard ☐

21 Gravity
A The occurrence of the event against which the cited standard is directed was
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐
B The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be
No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☒
C Number of persons who would be affected if the event occurred or were to occur 9

22 Good Faith
A Failure to abate within the time period given ☐
B Signature
C AR Number

Section IV – Automated System Data

23 Type of Inspection Activity Code AAA
24 Event Number 5100171
25 Primary or Mill

MSHA Form 7000-3 Apr 82 (revised)

U.S. Department of Labor
Mine Safety and Health Administration

✓

1. Date of Original Issuance: 05 11 83 | 2. Citation/Order Number: 2139902-

3. Subsequent Action ☒ Continuation ☐ | 4. Date: 05 26 83 (Mo Da Yr) | 5. Time (24 hr clock): 1700 | 6. Served To: Dan Green

7. Operator: Kent Robbins Coal Co. Inc. | Mine: No. 4 | 8. Mine ID: 15-09351- | (Contractor)

Justification For Action

The float coal dust in the no. 1 return air course has been all rock dusted.

(75.400)

JAN 25 198

9. Extended To ☐ | 9a. Date Mo Da Yr | 9b. Time (24 hr clock) | 10. Vacated ☐ Terminated ☒ Modified ☐

11. See Continuation Form ☐ | 12. Type of Inspection: AAA | 13. Event Number: 5100171

14. Signature: James Johnson | AR Number: 22779

MSHA Form 7000-3a, Apr 82 (revised)

Assessment copies being conferenced 5/1/83

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

✓

Section I - Violation Data

1. Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐
2. Date 05 11 83 (Mo Da Yr)
3. Time (24 hr clock) 1110
4. Citation/Order Number 2189903
5. Served To Don Green
6. Operator Kaist Robbins Coal Co Inc
7. Mine No. 4
8. Mine ID 15-09351 (Contractor)
9. Type of Action 104-A-
10. Violation A Health ☐ Safety ☒ Other ☐ B Section of Act C Part/Section of Title 30 CFR 75.400
11a Significant and Substantial (see reverse) ☒
11b Written Notice ☐

12 Condition or Practice

Float Coal dust was allowed to be deposited on Rock-dusted surfaces in the No. 1 Main belt entr from the Portal to the tail Roller a distance of approximately 4000 feet in length Very black in color. Misfired shots along with explosives and electric detonators, improperly stored could contribute to an ignition source.

This condition was one of the factors that contributed to the issuance of Imminent Danger Order No. 2185000 dated 05-11-83 Therefore no abatement time.

13 Area or Equipment

14 Initial Action Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐
15 Citation Order Number
16 Dated Mo Da Yr
17 Termination Due A Date Mo Da Yr B Time (24 hr clock) C Signature Paul O. Helton D AR Number 20426 ☐ See continuation form (MSHA Form 7000-3a)

Section II - Termination Action

18 Action to Terminate

JAN 25 1984

19 Terminated A Date Mo Da Yr B Time (24 hr clock) C Signature D AR Number

Section III - Inspector's Evaluation

20 Negligence (check one) A None ☐ B Low ☐ C Moderate ☒ D High ☐ E Reckless Disregard ☐

21 Gravity

A The occurrence of the event against which the cited standard is directed was
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐

B The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be
No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☒

C Number of persons who would be affected if the event occurred or were to occur 9

22 Good Faith
A Failure to abate within the time period given ☐
B Signature
C AR Number

Section IV - Automated System Data

23 Type of Inspection Activity Code AAA
24 Event Number 5100171
25 Primary or Mill

MSHA Form 7000-3 Apr 82 (revised)

ASSESSMENT Copies King Centerwood 6/7

U.S. Department of Labor
Mine Safety and Health Administration ✓

1. Date: 05 11 83 — 2. Citation/Order Number: 2199903-

3. Subsequent Action ☒ Continuation ☐ — 4. Date: 05 26 83 — 5. Time (24 hr. clock): 1700 — 6. Served To: Don Green

7. Operator: Kent Ralston Coal Co. Inc — Mine: No. 4 — 8. Mine ID: 15-09351- (Contractor)

Justification For Action

The float coal dust along the no. 1 main belt Conveyor has been cleaned up and well rock dusted.

(75.400)

9. Extended To ☐ — 9a. Date: Mo. Da. Yr. — 9b. Time (24 hr. clock) — 10. Vacated ☐ Terminated ☒ Modified ☐

11. See Continuation Form ☐ — 12. Type of Inspection: AAA — 13. Event Number: 5100171

14. Signature: [illegible] Johnson — AR Number: 22774

ASSESSMENT COPIES

U.S. Department of Labor
Mine Safety and Health Administration ✓

Section I – Violation Data

1. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐
2. Date 05 11 83
3. Time (24 hr clock) 1010
4. Citation/Order Number 2185000
5. Served To Dow Green
6. Operator Karst Robbins Coal Co. Inc.
7. Mine No. 4
8. Mine ID 15-09351 (Contractor)
9. Type of Action 107-a-
10. Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act C. Part/Section of Title 30 CFR
11a. Significant and Substantial (see reverse) ☐
11b. Written Notice ☐

12. Condition or Practice

Where (5) Misfires with electric detonators had occured and (3) of
(5) electric detonators leg wires were not shunted to prevent detonati
from possible source of active or stray electric current from the 416
VAC. power cable lying on the mine floor at various locations in the
No. 1 Main belt Entry which is used for mantrip purposes. The
operator had failed to remove the Misfired shots as stipulated
30 CFR. 15-74 Section (7)(b). The location of the Misfires were approx
-imatley 3000 feet inby the portal and the operator had installed the
No. (1) Main belt conveyor through the effected area. 4000 feet
Float coal dust Very black in color was allowed to be
deposited on Rock-dusted surfaces from the portal to the tail
roller from Rib to Rib, also the Return air course from
13
the No. 1 entry Portal to the No. 1 Battery charging station
which is also 4000 feet in length had float coal
dust deposited on Rock dusted surfaces Very black in
color. (75-400 CFR)
Misfired Shots Shall be removed and the entire length
of No. 1 Main belt conveyor and the Return air course
Shall be well rock dusted

14. Initial Action Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐
15. Citation Order Number
16. Dated Mo Da Yr
17. Termination Due A. Date Mo Da Yr B. Time (24 hr clock)
C. Signature Paul D. Helton
D. AR Number 20426
See continuation form (MSHA Form 7000-3a) ☐

Section II – Termination Action

18. Action to Terminate

19. Terminated A. Date Mo Da Yr B. Time (24 hr clock) C. Signature D. AR Number

Section III – Inspector's Evaluation

20. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☐ E. Reckless Disregard ☐

21. Gravity
A. The occurrence of the event against which the cited standard is directed was
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be
No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☐
C. Number of persons who would be affected if the event occurred or were to occur ☐☐☐

22. Good Faith
A. Failure to abate within the time period given ☐
B. Signature
C. AR Number

Section IV – Automated System Data

23. Type of inspection activity code AAA
24. Event Number 5100171
25. Primary or Mill

MSHA Form 7000-3 Apr 82 (revised)

ASSESSMENT COPIES
being conferenced

U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
MSHA FORM 7000-3a (Jun 78)

(original issue) DATED 05/11/83 (MO DA YR) No. 2165000

☒ SUBSEQUENT ACTION ☐ CONTINUATION ☐ CITATION ☒ ORDER DATE 05/12/83 (MO DA YR) TIME 1800 (24 HR CLOCK)

SERVED TO Dan Green OPERATOR Karst Robbins Coal Co. Inc.

MINE No. 4 MINE I.D. 15-09351-___ (CONTRACT

JUSTIFICATION FOR ACTION CHECKED BELOW The five misfired shots in the no. 1 main belt entry approximately 3000 feet inby the portal have been removed from the holes. The float coal dust was cleaned up and well rock dusted in the area.

[illegible]. (107-A)

JAN 25 1984

☐ EXTENDED TO: DATE __/__/__ (MO DA YR) TIME ____ (24 HR CLOCK) ☐ VACATED

OFFICE USE ONLY
CODES __/__ __P__ __ATD__ __/__ __/__
DATE

☒ TERMINATED ☐ MODIFIED ☐ SEE CONTINUATION FORM

TYPE OF INSPECTION AAA EVENT. 5100171

SIGNATURE James Johnson 277

ASSESSMENT copies

Mine Citation/Order
Continuation

U.S. Department of Labor
Mine Safety and Health Administration

1 [illegible] 051183 (Mo Da Yr) 2 Citation/Order Number 2185000-

3 Subsequent Action ☑ Continuation ☐ 4 Date 120584 (Mo Da Yr) 5 Time (24 hr clock) 1010 6 Served To EDDIE KARST

7 Operator KARST ROBBINS COAL CO INC Mine No 4 8 Mine ID 15-09351- (Contractor)

Justification For Action

THE ORDER WAS ISSUED BECAUSE EXPLOSIVES, CONTAINING DETONATORS, FLOAT DUST, AND AN ENERGIZED 4160 V-AC POWER CABLE WERE PRESENT IN THE No. 1 MAIN BELT ENTRY. MINER SUBSEQUENTLY RODE THE BELT, BEFORE THE CABLE WAS DE-ENERGIZED AND THE OTHER CONDITIONS WERE CORRECTED, NEGATING THE THE IMMINENT DANGER.

JAN 25

9 Extended To ☐ 9a Date Mo Da Yr 9b Time (24 hr clock) 10 Vacated ☑ Terminated ☐ Modified ☐

11 See Continuation Form ☐ 12 Type of Inspection AAA 13 Event Number 5100171

14 Signature AR Number 21412

MSHA [illegible] 82 (revised)

The **Chairman**. And did a coal company operator named Clyde Bennett accuse you of writing gray-line citations?

Mr. **Helton**. Yes, sir, he did.

The **Chairman**. What did he mean by gray-line citations?

Mr. **Helton**. Well, this was not Clyde Bennett himself; it was one of his employees, officials. They said that I wrote violations that could be or could not be construed as a violation. And one in particular he was talking about was the one in which I had arrived at the mine, and the mine fan, the ventilating fan, was running the opposite direction that it was supposed to have been according to the ventilation plan. And they called that a gray-line violation.

The **Chairman**. And did he complain to Mr. Spicer and your superior?

Mr. **Helton**. Yes, he did.

The **Chairman**. And did they back you up?

Mr. **Helton**. No, sir. Mr. Spicer was present at that conference, and he agreed, and my front-line supervisor also agreed that I wrote gray-line violations.

The **Chairman**. Does the Bennett family own a number of mines?

Mr. **Helton**. Yes, they do.

The **Chairman**. Have there been a number of fatalities in their mines?

Mr. **Helton**. Yes, there have.

The **Chairman**. I have a memo dated July 20th, 1985, from a Mr. Lamonica to Mr. Querry, pointing out that from 1980 to 1985, there were ten fatalities in mines operated by the Bennett family.

Mr. **Helton**. Yes, sir.

The **Chairman**. I will include it in the record and read one part. "In less than five years, ten fatalities occurred in mines operated by Messrs. George Clyde and Dwayne Bennett. Of these ten fatalities, seven were caused by accidents of the mine roof."

[The memo referred to follows:]

JUN 20 1985

CMS&H Memo No. HQ-85-547-S (6026)

MEMORANDUM FOR: WILLARD E. QUERRY

FROM : JOSEPH A. LAMONICA Signed Jerry L. Spicer for
Administrator
for Coal Mine Safety and Health

SUBJECT : Fatalities at the No. 1 Mine, Manalapan Mining Company, Inc.,
Highsplint, Harlan County, Kentucky

The rib roll fatality which occurred on June 4, 1985, at the subject mine is the second fatality at this mine within a seven-month period. Both fatalities were the result of roof action.

We have reviewed the fatalities listed below which occurred since 1980 in mines operated by members of the Bennett family. We are attaching a copy of the abstract of each investigation except for the most recent fatality; for that accident, we are attaching a copy of the preliminary report of the accident.

| Date | Mine | Type of Accident | Operator | No. Killed |
|---|---|---|---|---|
| 09/06/80 | No. H-2 | Roof Fall | Clyde Bennett | 1 |
| 06/03/81 | Grays Knob | Inundation (blackdamp) | Clyde Bennett | 3 |
| 04/26/82 | Rice Harlan | Roof Fall | George Bennett | 2 |
| 05/10/83 | No. 1 | Roof Fall | Clyde Bennett | 1 |
| 08/01/84 | No. 1 | Roof Fall | Clyde Bennett | 1 |
| 11/07/84 | No. 1 | Roof Fall | Duane Bennett | 1 |
| 06/04/85 | No. 1 | Roof Fall (rib roll) | Duane Bennett | 1 |

In less than five years, ten fatalities occurred in mines operated by Messrs. George, Clyde, and Duane Bennett. Of these ten fatalities, seven were caused by action of the mine roof. Two roof fall fatalities occurred within fifteen months in the same mine operated by Mr. Clyde Bennett and two roof fall fatalities occurred within a seven-month period in the same mine operated by Mr. Duane Bennett.

This number of fatalities is unacceptable. Further, in each Report of Investigation, the investigator states, in effect, that the fatality was caused by management's failure to take certain safety precautions.

In view of this dismal record, you are requested to provide me, immediately, with an action plan that addresses the issues relating to these many fatalities. The action plan should set forth what you will do immediately, in the short term and long range, that will have a positive impact on the mines operated by the Bennett family.

If you have any questions, please contact myself or Mr. Herschel H. Potter.

Attachments

cc: J. Lamonica
ARF
J. Spicer
C. Lester
H. Potter
J. Carter
D. Cavanaugh
MSHA Files, Rm. 737A, Code-6026--Roof Control

MCS:HHPotter:mag:06/19/85

MESA Form [illegible]
February, 1977

## Abstract of Investigation

Title of Investigation: Fatal Roof Fall Accident

Report Release Date: 10-23-80

Mine: No. H-2 Mine

Mine I.D. Number: 15-11964

Company: Harlan Cumberland Coal Company

Town, County, State:
Louellen, Harlan County, Kentucky

Author(s):
Lawrence Spurlock

**Mine Information**

Daily Production ..200 tons

Surface Employment ..1

Underground Employment ..7

Name of Coalbed ..Harlan Seam

Thickness of Coalbed ..64 inches

Last Quarter Injury Frequency Rate (HSAC) for:

Industry ..11.99

This Operation ..0

Training Program Approved ..yes

Mine Profile Rating ..None

Originating Office - Mine Safety and Health Administration, Coal Mine Safety & Health

District ..7

Address: 616 Manchester Street
Barbourville, Kentucky 40906

Authority - This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977 (Pub. L. 95-164).

**Abstract**

On Saturday, September 6, 1980, about 8:45 a.m., a roof fall accident occurred in the right crosscut of the No. 2 entry, 001 section of the H-2 Mine, Harlan Cumberland Coal Company, resulting in the death of Robin Rice, continuous-mining machine operator helper. Rice had 3 years and 6 months total mining experience, 1 year and 2 months with this company, and 7 weeks at the H-2 Mine. The accident and resultant fatality occurred when the victim proceeded into an area of known loose roof before the roof was supported or taken down.

Information for this report was compiled through a MESA Investigation that was started ..September 8, 1980

| Company Officials: | Name | Address |
|---|---|---|
| President | Clyde V. Bennett | Grays Knob, Kentucky 40829 |
| Superintendent | None | |
| Safety Director | Wallace Harris | Same |
| Principle officer - H&S | Robert Burgan | Louellen, Kentucky |
| Labor Organization | None | |
| Chairman - H&S Committee | None | |

## ABSTRACT OF INVESTIGATION

*Title of Investigation:* Multiple Fatal Inundation (Blackdamp) Accident

*Report Release Date:* MAR 26 1982

*Mine:* No. 5 Mine

*Mine ID Number:* 15-05184

*Company:* Grays Knob Coal Company

*Town, County, State:* Grays Knob, Harlan County, Kentucky

*Author(s):*
Harry J. Carter
Earnest C. Teaster, Jr.

*Mine Information*

*Daily Production* ...200 tons...

*Surface Employment* ...1...

*Underground Employment* ...8...

*Name of Coalbed* ...Harlan...

*Thickness of Coalbed* ...42" to 60"...

*Last Quarter Injury Incident Rate (HSAC) for:*
*Industry* ...12.88...
*This Operation* ...0.00...
*Training Program Approved* ...Yes...
*Mine Profile Rating* ...None...

*Originating Office - Mine Safety and Health, Administration, Coal Mine Safety and Health, Office of the Administrator*
*Address: 4015 Wilson Boulevard*
*Arlington, Virginia 22203*

*Authority - This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977 (Public Law 91-173, as amended by Public Law 95-164)*

### *Abstract*

At approximately 2:30 p.m., on Wednesday, June 3, 1981, a mine inundation accident occurred at the face of the No. 1 room of the second set of rooms off east main at Grays Knob Coal Company's No. 5 mine. The accident resulted in the death of Harvey L. Hill, Roger D. Clem, and Jerry W. Laws. Hill, age 30, had a total of 8-1/2 years mining experience, the last 3 years at this mine as a section foreman. Clem, age 23, had a total of 5 years mining experience, the last 3 weeks at this mine as a roof-bolting machine operator. Laws, age 25, had 4 years mining experience, the last 2 weeks at this mine as a roof-bolting machine operator helper. The accident occurred when the continuous mining machine unintentionally penetrated the abandoned adjacent No. 1 mine, which allowed a sudden inrush of blackdamp (oxygen-deficient atmosphere) that permeated the entire section. Management's failure to require that boreholes be drilled in advance of the working faces was the cause of this accident.

*Information for this report was compiled through a MSHA investigation that was started* ...June 3, 1981...

| *Company Officials:* | *Name* | *Address* |
|---|---|---|
| *President* | Clyde V. Bennett III | Grays Knob, Kentucky 40829 |
| *Superintendent* | Joe Felosi | Grays Knob, Kentucky 40829 |
| *Safety Director* | Wallace Harris | Grays Knob, Kentucky 40829 |
| *Principle Officer - H&S* | Wallace Harris | Grays Knob, Kentucky 40829 |

*Labor Organization* ....Non-agreement...

*Chairman - H&S Committee* ....N/A...

## ABSTRACT OF INVESTIGATION

*Title of Investigation:*
Multiple Fatal Roof Fall Accident

*Report Release Date:* JUL 29 1982

*Mine:* Rice Harlan Mine

*Mine ID Number:* 15-06778

*Company:* Alliance of Puckett Coal Company, Incorporated

*Town, County, State:* Pathfork (Alva), Harlan County, Kentucky

*Author(s):* James D. Carter
Gene B. Fuller

*Mine Information*

*Daily Production* ....100 tons....

*Surface Employment* ....1....

*Underground Employment* ....16....

*Name of Coalbed* ....Harlan....

*Thickness of Coalbed* ....35 inches....

*Last Quarter Injury Incident Rate (HSAC) for:*
*Industry* ....10.78
*This Operation* ....No accidents reported
*Training Program Approved* ....Yes....
*Mine Profile Rating* ....None....

*Originating Office - Mine Safety and Health Administration, Coal Mine Safety and Health, Office of the Administrator*
*Address: 4015 Wilson Boulevard*
*Arlington, Virginia 22203*

*Authority - This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977 (Public Law 91-173, as amended by Public Law 95-164)*

### *Abstract*

On April 26, 1982, at approximately 11 p.m., a fall of roof occurred at the face of the right crosscut off No. 2 entry of the No. 001 section of the Rice Harlan Mine, Alliance of Puckett Coal Company, Incorporated. The fall resulted in the deaths of Charles Honeycutt, jack setter, and Bill Perry, timberman. The miners had 3 and 3-1/4 years of mining experience, respectively. The accident occurred because management permitted miners to work under known hazardous roof that had not been properly supported.

*Information for this report was compiled through a MSHA investigation that was started* ....April 28, 1982....

| *Company Officials:* | *Name* | *Address* |
|---|---|---|
| *President* | George Bennett | Pathfork, Kentucky 40863 |
| *Superintendent* | None | |
| *Safety Director* | Anita Day | Pathfork, Kentucky 40863 |
| *Principle Officer - H&S* | George Bennett | Pathfork, Kentucky 40863 |
| *Labor Organization* | None | |
| *Chairman - H&S Committee* | None | |

[illegible]

Mine Safety and Health Administration

**Authority—**

This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164.

## SECTION A—IDENTIFICATION DATA

1. Title of investigation: Fatal Fall of Roof Accident
2. Date MESA investigation started: 5/11/83
3. Report release date: 8/5/83
4. Mine: No. 1
5. Mine ID number: 15-00590
6. Company: Dixie Fuel Company
7. Town, County, State: Crummies, Harlan, KY
8. Author(s): Edward R. Morgan

## SECTION B—MINE INFORMATION

9. Daily production: 700
10. Surface employment: 5
11. Underground employment: 28
12. Name of coalbed: Upper Mason
13. Thickness of coalbed: 38 inches

## SECTION C—ORIGINATING OFFICE

18 Mine Safety and Health Administration
Coal Mine Health and Safety District No.: 7
Address: P. O. Box 572, Barbourville, ~~KY 40906~~

## SECTION D—[illegible]

14. Industry: 8.14
15. This operation: 0.00
16. Training program approved: yes
17. Mine Profile Rating: none

## SECTION E—ABSTRACT

On Tuesday, May 10, 1983, at 12 noon, a fall of roof accident occurred in the crosscut left off the No. 2 entry, 004 section at Dixie Fuel Company, No. 1 Mine. The accident resulted in fatal injuries to Randall L. Maggard, right side jack setter. Maggard, age 24, had 7 years mining experience, 18 months at this mine. The accident occurred while the Wilcox continuous miner was being pulled back from the face of the No. 1 entry. A previously detected horseback measuring 16 feet long, 10 feet wide, and 3 - 4 feet thick fell without warning, striking Maggard. The cause of the accident was failure to adequately support the roof as required by the approved Roof Control Plan which states crossbars are to be installed in locations where slips are encountered.

## SECTION F—MINE ORGANIZATION

| Company officials: | Name | Address |
|---|---|---|
| 19. President: | Clyde V. Bennett | General Delivery, Grays Knob, KY 40829 |
| 20. Superintendent: | Clarence Parsons | Browning Acres, Harlan, KY 40831 |
| 21. Safety Director: | Wallace Harris, Jr. | Grays Knob, KY 40829 |
| 22. Principle officer—H&S: | Wallace Harris, Jr. | Grays Knob, KY 40829 |
| 23. Labor Organization: | Non-agreement | |
| 24. Chairman—H&S Committee: | N/A | |

Abstract of Investigation

U.S. Department of Labor
Mine Safety and Health Administration

*Authority* – This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164

**Section A – Identification Data**

1. Title of investigation: Fatal Roof Fall
2. Date MSHA investigation started: August 1, 1984
3. Report release date: November 19, 1984
4. Mine: No. 1 Mine
5. Mine ID number: 15-00590
6. Company: Dixie Fuel Company
7. Town, County, State: Cawood, Harlan County, Kentucky
8. Author(s): Ronnie Brock and Lawrence L. Layne

**Section B – Mine Information**

9. Daily production: 500
10. Surface employment: 6
11. Underground employment: 33
12. Name of coalbed: Upper Mason
13. Thickness of coalbed: 30"

**Section C – Last Quarter Injury Frequency Rate (HSAC) for:**

14. Industry: 5.45
15. This operation: 0
16. Training program approved: January 31, 1979
17. Mine Profile Rating: Not currently rated

**Section D – Originating Office**

18. Mine Safety and Health Administration Coal Mine Health and Safety District No.: 7
Address: P.O. Box 572, Barbourville, Kentucky 40906

**Section E – Abstract**

On Wednesday, August 1, 1984, at 12:20 p.m., a roof fall accident occurred in the 2nd left crosscut off No. 6 room off the 1st right entry (004 working section), at Dixie Fuel Company' No. 1 Mine, resulting in the death of William C. Billings, right-side jacksetter. Billings had six years mining experience and three years experience as a jacksetter. While advancing the 2nd left crosscut, a massive roof fall occurred, trapping four miners who were working in the immediate area. Two miners freed themselves immediately and the continuous miner operator was freed 40 minutes later with the assistance of fellow workmen. The victim received fatal crushing injuries and was recovered five hours and 44 minutes after the roof fall. The accident and resulting fatality occurred due to management's failure to detect and adequately support the subnormal roof conditions that were encountered throughout the 004 section.

**Section F – Mine Organization**

| Company officials | Name | Address |
|---|---|---|
| 19. President: | Clyde Bennett | Gray's Knob, Kentucky 40829 |
| 20. Superintendent: | Clarence Parsons | Gray's Knob, Kentucky 40829 |
| 21. Safety Director: | Wallace Harris | Gray's Knob, Kentucky 40829 |
| 22. Principle officer – H&S | Wallace Harris | Gray's Knob, Kentucky 40829 |
| 23. Labor Organization: | N/A | |
| 24. Chairman – H&S Committee | N/A | |

MSHA Form 2000-57, Apr 82 (revised)

U.S. Department of Labor
Mine Safety an[illegible]th Administration

*Authority*—This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164.

**Section A—Identification Data**

1. Title of investigation: Fatal Roof Fall Accident
2. Date MSHA investigation started: November 8, 1984
3. Report release date: February 15, 1985
4. Mine: No. 1 Mine
5. Mine ID number: 15-05423
6. Company: Manalapan Mining Company, Inc.
7. Town, County, State: Highsplint, Harlan County, Kentucky
8. Author(s): Ronnie Brock

**Section B—Mine Information**

9. Daily production: 5,000 tons
10. Surface employment: 3
11. Underground employment: 147
12. Name of coalbed: Harlan
13. Thickness of coalbed: 11 feet

**Section C—Last Quarter Injury Frequency Rate (HSAC) for:**

14. Industry: 5.71
15. This operation: 5.31
16. Training program approved: August 22, 1983
17. Mine Profile Rating: Not currently rated

**Section D—Originating Office**

18. Mine Safety and Health Administration Coal Mine Health and Safety District No.: 7
Address: P.O. Box 572, Barbourville, KY 40906

**Section E—Abstract**

On Wednesday, November 7, 1984, at approximately 8:15 p.m., a roof fall accident occurred i the No. 3 entry of the No. 10 section, No. 1 Mine, Manalapan Mining Company, Inc., resultin in the death of Tommy A. Middleton, repairman. Middleton had 11 years mining experience, including three years as a repairman. The fatal accident occurred when a large section of roof fell from between the roof bolts as Middleton was walking beside the roof bolting machine. The accident and resultant fatality occurred due to management's failure to detect [illegible]ly support the roof in the fall area where the roof bolts were found to be improperly spaced.

**Section F—Mine Organization**

| Company officials: | Name | Address |
|---|---|---|
| 19. President: | Duane Bennett | General Delivery, Brookside, Kentuck |
| 20. Superintendent: | Ralph Napier | Star Rt. #1, Highsplint, Kentucky |
| 21. Safety Director: | | |
| 22. Principle officer—H&S: | | |
| 23. Labor Organization: | N/A | |
| 24. Chairman—H&S Committee: | N/A | |

MSHA Form 2000-57, Apr 82 (revised)

of Fatal Accident

U.S. Department of Labor
Mine Safety and Health Administration

This form is affected by the Privacy Act of 1974.

1. Fatal Case Number: 30
2. Accident Classification: FALL OF RIB
3. Today's Date: 6/05/85
4. District: 7
5. Subdistrict: Barbourville
6. Field Office: Harlan
Name of Person Preparing Report: Larry Layne
8. MSHA Person Notified: Elmer H. Smith
Date: 6/04/85 Time: Approx. 3:00 p.
9. Notifying Mine Person: Lloyd Canada
10. Telephone Number:
11a. Company/Contractor Name: Manalapan Mining Company, Inc.
11b. Parent Company:
12. Mine Name: No. 1 Mine
13. ID Number: 15-05423
14. Primary Mineral Mined: Coal
15. Number of Employees a. Total: 208 b. Underground: 176 c. Open Pit or Quarry: d. Mill: e. Other: 32
16. a. Number of Persons in Mine at Time of Accident: 4 b. Number of Persons Unaccounted for: 0
17. Mine Location a. City: Highsplint b. County: Harlan c. State: Kentucky
18. Date of Accident (month, day, year): 6/04/85
19. Time of Accident (indicate a.m. or p.m.): 2:40 p.m.
20. Date/Time of Death (month, day, year): 6/04/85; 2:40 p.m.
21. Code which best describes where accident occurred.

☒ 01–Underground
☐ 02–Surface at Underground
☐ 03–Open Pit Mine
☐ 06–Dredge Mining
☐ 30–Mill
☐ 99–Office Facilities
☐ Other (specify)

22. Number of Nonfatal Injuries: 0
23. Number of Fatal Injuries or Illnesses (complete additional sheets for multiple fatals): 1 a. Name: Richard Boggs
b. Age: 30 c. SSN (last 4 digits): -7594 d. Regular Job Title: Roof Bolter Operator e. Job Title When Injured, if different: SAME
Mining Experience a. Total: b. With Company: 4 yrs. c. At Mine: 4 yrs. d. On Job: 4 yrs.
25. Autopsy ☒ Yes ☐ No a. Place: Lexington, KY
26. Status of rescue and recovery operations. (Attach separate sheet if necessary): COMPLETE
27. Description of Accident, include equipment involved and exact location in mine of fatality. (continue on reverse if more space needed)

A fall of the right rib in the second cut of a pillar split in the No. 4 panel room of 004 section resulted in the victim's death. The victim, who was operating a twin-head FMC roof bolting machine, was trapped against the machine by the fall.

Kendall H. Potter – 6/6/85

28. Signature: Carl E. Boone, II Title: Subdistrict Manager Date: 6/05/85

MSHA Form 7000-13, July 82

The CHAIRMAN. Who was Mr. Querry?

Mr. HELTON. Willard Querry is the now acting District Manager of District 7.

The CHAIRMAN. He replaced Spicer, is that right?

Mr. HELTON. No. He replaced James Begley, who was there in our office a short period of time and passed away.

The CHAIRMAN. Was your Sub-District Manager, until he retired, also an official of another organization while he was Sub-District Manager?

Mr. HELTON. Yes, sir.

The CHAIRMAN. What was he an official of?

Mr. HELTON. That would be T.R. Mark. He was the Sub-District Manager for MSHA in Barbourville, and he was also the Secretary-Treasurer of the Harlan County Coal Operators' Association.

The CHAIRMAN. The Coal Operators' Association?

Mr. HELTON. Right.

The CHAIRMAN. Did you on another occasion issue citations and a closure order to the Harlan Fuel Company?

Mr. HELTON. Yes, sir.

The CHAIRMAN. Why did you issue the order?

Mr. HELTON. We have 103 of the Act which gives us the privilege to enter onto and in any coal mine for the purpose of conducting an inspection. And if we are hindered in any way by the coal operator or anyone in doing that job, we are to issue them a violation under 103 of the Act.

The CHAIRMAN. So you issued the order?

Mr. HELTON. I issued a citation and an order, right.

The CHAIRMAN. And did the company complain to your Sub-District Manager?

Mr. HELTON. Yes, sir, they did.

The CHAIRMAN. And did he direct you to vacate the order?

Mr. HELTON. During a conference up there at the mine property that day, with him and my front-line supervisor, the Sub-District Manager advised me to vacate the order, that they had agreed to let me inspect the coal mine. That was 24 hours after, or 18 hours after. And I said, "Well, the law has done been broke, so I am not vacating the order."

The CHAIRMAN. Did you also conduct inspections at the Manalapan mine?

Mr. HELTON. Yes, sir, I have.

The CHAIRMAN. And did you issue citations there?

Mr. HELTON. Yes, sir.

The CHAIRMAN. We will make those a part of the record.

[Information supplied for the record follows:]

Manalapan

Complete below for underground only

51 Number and Types of Underground Openings — A. *Shafts — B. *Slopes — C. *Drifts

52 Number of Producing — A. MMUs: 05 — B. Pits — C. Augers

53 *Name of Coal Bed: HArLAN

Mine Organization Data

54 Type — A. Corp ☐ — B. Partnership ☒ — C. Other (specify)

55 Oper Name and Title: DuAne Bennett Pres.

56 Street or Box Number: Gen Del

57 City: Brookside

58 State Abbr: Ky

59 Zip Code: 40301

60 Principal Officer for H&S: Ralph Napier

61 Street or Box Number: StAr Rt I

62 City: Highsplint

63 State Abbr: Ky

64 Zip Code: 40828

For Internal Office Use Only

Mine ID: 15 05423

Organization Code: 20712

Complete Items 65 through 81 for Inspections and Investigations Only

65 Action — A. New Entry — B. Update — C. Delete — D. Confirm Delete — E. Retrieve

66 Work Group Identifier: 03

67 Activity Code: CCA

68 Event Number: 5300783

69 Date Event Started: 10/17/84 (mo da yr)

70 Date Event Finished: 10/19/84 (mo da yr)

71 Report Type (check one) — A. First — B. Interim — C. Last — D. Not Applicable ☒

72 Inspection Dates — From (mo da yr) — To (mo da yr)

| | Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|---|
| | | | | 10/17 | | | |
| | 1 2 3 | 1 2 3 | 1 2 3 | 1 [✓ 2] 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |

73 Daily Production: 02000

75 Number of Samples

| | | | |
|---|---|---|---|
| A. Air Samples | 0 | B. Rock Dust Soot | 0 |
| C. Rock Dust Survey | 0 | D. Respirable Dust | 0 |
| E. Noise | 0 | | |

76 Area of Inspection

| | | | | | |
|---|---|---|---|---|---|
| A. Company Records | Y | B. Surface Facility | N | C. Surface Workings | N |
| D. Underground Workings | Y | E. ATF | N | F. Outby Areas | Y |
| G. Major Construction | N | H. Shaft/Slopes | N | I. Impoundments | N |
| J. Waste Deposits | N | K. Other | N | | |

L. MMU/Pit Number: (1) 010-0 (2) – (3) – (4) – (5) – (6) – (7) – (8) – (9) – (10) – (11) – (12) – (13) – (14) – (15) – (16) – (17) – (18) – (19) – (20) – (21) – (22) – (23) – (24) – (25) – (26) – (27) – (28) – (29) –

(1) (2) (3) (4)

FHC (1) (2) (3) (4) — C. Classification (1) (2) (3) (4)

77 Inspection Results

| | | Citations | Orders | Safeguards | Other |
|---|---|---|---|---|---|
| A. This Inspection | (1) New Issuances | 06 | | | |
| | (2) Terminations/Vacations | 03 | | | |
| | (3) Modifications/Extensions | | | | |
| | (4) Left Pending | 03 | | | |
| B. Previously Issued | (5) Modifications Extensions | 02 | 02 | | |
| | (6) Terminations Vacations | 01 | | | |

78 Is Mine Safety Committee Maintained — Yes ☐ No ☒

79 Is there a Designated Representative of Miners? — Yes ☐ No ☒

80 Independent Contractor Codes

81 103(i) Classification

A. Current Status — In 103(i) ☐ Not in 103(i) ☒ (check one)

B. Applicable 103(i) Code

C. Date Entered Current 103(i) Status (mo da yr)

This report is based on an inspection made under the Federal Mine Safety and Health Act of 1977.

Signature of Authorized Representative who is Responsible for Inspection/Investigation: Paul D. Helton

AR Number: 20426

MSHA Form 2000-122, July 81 (Revised) (Previous editions are obsolete)

☆ U.S. GOVERNMENT PRINTING OFFICE 1984 777-627

Mine Citation/Order

**U.S. Department of Labor**
Mine Safety and Health Administration

**Section I–Violation Data**

1. Type of issuance (check one) Citation ☑ Order ☐ Safeguard ☐
2. Date 1 1 / 1 7 / 8 1 (Mo. Da. Yr.)
3. Time (24 hr. clock) 1 0 0 0
4. Citation/Order Number 2474719

5. Served To [illegible]
6. Operator [illegible] Mining Co. Inc.
7. Mine [illegible]
8. Mine ID 15-054[illegible] (Contractor)

9. Type of Action [illegible]

10. Violation A. Health ☐ Safety ☑ Other ☐ B. Section of Act C. Part/Section of Title 30 CFR [illegible]5.20[illegible]

11a. Significant and Substantial (see reverse) ☑ 11b. Written Notice ☐

12. Condition or Practice

[illegible] excavated pile was

[illegible] the

[illegible] and [illegible] observed

[illegible] for the [illegible]

[illegible]

[illegible]

[illegible] feet

13. Area or Equipment

[illegible] across [illegible]

[illegible] Right

14. Initial Action: Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐
15. Citation/Order Number
16. Dated Mo. Da. Yr.

17. Termination Due: A. Date [illegible] (Mo. Da. Yr.) B. Time (24 hr clock) [illegible] C. Signature [illegible] Helton D. AR Number [illegible] ☐ See continuation form (MSHA Form 7000-3a)

**Section II–Termination Action**

18. Action to Terminate

[illegible]

[illegible]

[illegible]

[illegible] and

19. Terminated [illegible] (Mo. Da. Yr.) B. Time (24 hr. clock) [illegible] C. Signature [illegible] Helton D. AR Number [illegible]

**Section III–**

20. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☑ D. High ☐ E. Reckless Disregard ☐

21. Gravity

A. The occurrence of the event against which the cited standard is directed was
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☑ Occurred ☐

B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be
No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☑

C. Number of persons who would be affected if the event occurred or were to occur 0 1

22. Good Faith
A. Failure to abate within the time period given ☐ B. Signature C. AR Number

**Section IV–Automated System Data**

23. Type of Inspection (activity code) 24. Event Number 25. Primary or Mill

MSHA Form 7000-3, Apr 82, (revised)

## NOTICE

1. Enclosed is a copy of a decision by an Administrative Law Judge of the Federal Mine Safety and Health Review Commission. The issuance date of this decision appears on the first page of the decision.

2. You may petition for review of this decision by the Commission. PETITIONS FOR DISCRETIONARY REVIEW MUST BE RECEIVED BY THE COMMISSION WITHIN THIRTY (30) CALENDAR DAYS AFTER THE ISSUANCE DATE OF THE DECISION TO BE CONSIDERED [29 C.F.R. § 2700.5(d) and .70(a)]. If you mail the petition, you should therefore allow enough time for delivery by the thirtieth day. Petitions should be filed at:

   DOCKET OFFICE
   FEDERAL MINE SAFETY AND
   HEALTH REVIEW COMMISSION
   SIXTH FLOOR
   1730 K STREET, N.W.
   WASHINGTON, D.C. 20006
   [Telephone Number 202/653-5629]

3. The Federal Mine Safety and Health Act and the Commission's Rules of Procedure specify that a petition may be filed only on one or more of the following grounds:

   (I) A finding or conclusion of material fact is not supported by substantial evidence.
   (II) A necessary legal conclusion is erroneous.
   (III) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission.
   (IV) A substantial question of law, policy or discretion is involved.
   (V) A prejudicial error of procedure was committed.

   Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations, or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass. For further details on the filing of documents and the review process, see 30 U.S.C. § 823(d) and Commission Rules 5 through 9 and 70 through 72 [29 C.F.R. § 2700.5-.9 and .70-.72].

4. If a petition is filed, each party will be notified of the Commission's action on the petition.

TB

RECEIVED
MAR 2 10 54 AM '87
OFFICE OF THE SOLICITOR
U.S. DEPT OF LABOR
NASHVILLE, TN.

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

FEB 25 1987

| | |
|---|---|
| MANALAPAN MINING COMPANY,<br>Contestant | CONTEST PROCEEDING |
| v. | Docket No. KENT 86-119-R<br>Citation No. 2596792-04; 6/5/85 |
| SECRETARY OF LABOR,<br>MINE SAFETY AND HEALTH<br>ADMINISTRATION (MSHA),<br>Respondent | Harlan No. 1 Mine |
| SECRETARY OF LABOR,<br>MINE SAFETY AND HEALTH<br>ADMINISTRATION (MSHA),<br>Petitioner | CIVIL PENALTY PROCEEDING<br>Docket No. KENT 86-130<br>A.C. No. 15-05423-03563 |
| v. | Harlan No. 1 Mine |
| MANALAPAN MINING COMPANY,<br>Respondent | |

## DECISION

Appearances: Karl S. Forester, Esq., Forester, Forester, Buttermore & Turner, P.S.C., Harlan, Kentucky for Manalapan Mining Company;
Theresa Ball, Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee for the Secretary of Labor.

Before: Judge Melick

These consolidated cases are before me pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et. seq., the "Act," to challenge the issuance by the Secretary of Labor of one citation and two withdrawal orders charging the Manalapan Mining Company (Manalapan) with violations of regulatory standards. The general issues before me are whether Manalapan violated the cited standards and, if so, whether the violations were of such a nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard, i.e., whether the violations were "significant and substantial". If violations are found it will also be necessary to determine the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act.

During the course of an investigation of a June 4, 1985, fatal rib fall accident at the Harlan No. 1 Mine several withdrawal orders and citations were issued, three of which are before me in these proceedings. At hearings the parties agreed to settle Order No. 2594901 for the $1,000 penalty proposed by the Secretary. I have considered the representations and documentation submitted in support of the proposed settlement and find that it meets the criteria set forth in section 110(i) of the Act. Accordingly the proposed settlement of Order No. 2594901 is approved.

Citation No. 2596792 alleges a "significant and substantial" violation of the operator's roof control plan under the standard at 30 C.F.R. § 75.200 and charges as follows:

> Dangerous loose overhanging ribs were present in all active workings of the 004-0 section, and also the supply track from the subject section to the No. 4 cross entry belt outby. This condition was the contributing factor which led to the issuance of imminent danger order issued during a fatal accident investigation; order No. 2596791 issued 6-5-85.

The citation was subsequently modified on May 14, 1986 as follows:

> This violation is hereby modified to read item (20) negligence as being (e) (Reckless Disregard) because the operator had been warned prior to the fatal accident by two (2) other persons being injured and by previous citations issued that the ribs were dangerous and also memo written concerning rib controls and no action was taken until after the fatal to control ribs in high coal bed. Also modified to read item (21) Gravity (A) as being (occurred) because (1) man was killed as a direct result of no measures taken to control ribs in the high coal bed.

The cited standard, 30 C.F.R. § 75.200, provides in part that "the roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs."

There is indeed no dispute that on June 5, 1985, the date of the violation alleged in the citation at bar, loose and overhanging ribs were present in the active workings of the 004-0 section of the Harlan No. 1 Mine. Indeed Mine Superintendant Ralph Napier admitted that there were a "pretty lot" of loose and overhanging ribs in the section on June 5. The violation is accordingly proven as charged.

The evidence is also undisputed that such loose and overhanging ribs existing in active workings constitute a serious hazard. In of the absence of any rib control in this section of the mine where the extracted height was 12 feet, where they were retreat mining (and not all of the pillars were being extracted during the process thereby creating excess pressure on the ribs), and where there existed a rockband some 2 feet from the mine roof thereby placing additional pressure on the 2 feet of coal between the roof and rockband, the violation was also "significant and substantial." Secretary v. Mathies Coal Company, FMSHRC 1 (1984).

Whether this violation was caused by Manalapan's negligence depends on whether Manalapan officials knew or should have known of the violative conditions, or regardless of whether they knew or should have known of those conditions whether they nevertheless failed to follow safe industry practice in providing additional rib support under the circumstances as they existed on June 5, 1985.

The Secretary argues that the dangerous loose and overhanging ribs cited on June 5, 1985, had existed since before the fatal rib fall at around 2:45 p.m. on June 4, 1985. According to Inspector Ronny Russell of the Federal Mine Safety and Health Administration (MSHA) the overhanging rib conditions in the 004 section were about the same on June 5 as they were on the date of the fatality June 4. Russell was in the 004 section on June 4 after the fatal accident and testified that he then saw dangerous, loose overhanging ribs throughout the active working section. Russell was however the only witness to claim that he actually saw such dangerous loose and overhanging ribs on June 4. Moreover Russell never did issue an order or citation for these alleged conditions on June 4. It is also interesting that although Russell had been the regular MSHA inspector at the Manalapan Mine and had in fact inspected it on the preceding May 22nd and May 30th 1985, he had never issued any citations for roof or rib violations. All of the remaining witnesses who were present in the cited section on June 4, disagreed moreover with Russell's observations.

Frank Curry a Manalapan roof bolter was working in the vicinity of the fatal accident before it occurred. While he thought there may have been some loose ribs behind them none were overhanging. According to Curry the deceased had tested the rib that fell with a steel drill. Moreover the rib was "straight up and down" with no cracks or fractures to be seen.

Richard Cohelia, the Manalapan Safety Director, did not remember seeing any loose or overhanging ribs in the 004 section after the accident. According to Cohelia the conditions had significantly deteriorated overnight so that on June 5, 1985, several loose ribs had slabbed out from the permanent rib.

Johnny Helton the Manalapan General Mine Foreman, and Ralph Napier both went into the 004 section shortly after the accident on June 4 and neither saw any loose or overhanging ribs in that section. They both returned on June 5, and found that some of the ribs had since rolled out from the weight of the roof and there were loose and overhanging ribs at that time.

Gary Cochran the 004 Section Foreman on June 4th testified that the section was being retreated in an area of 12 foot coal. Cochran entered the mine at around 6:45 that morning to perform his on-shift examination. They began cutting coal at around 11:30 that morning and were in the second cut when they saw some loose ribs. The continuous miner was then moved in. According to Cochran the ribs were then trimmed back to an angle of 45 degrees and they "looked good" when the miner was backed out. Cochran also saw the deceased and Curry each take down some loose coal with an 11 foot drill steel bar. Cochran testified that he then checked both the right and left side visually before he left. 15 minutes later he heard that Boggs had been killed in the heading. According to Cochran there was only 1 overhanging rib in his section which was taken down prior to Bogg's accident.

Raymond Gross, Jr. was working on June 4, 1985, in the 004 section for Foreman Cochran. According to Gross the ribs were "in good shape" at that time although there had been some sloughing.

Within this framework of evidence I do not find that the Secretary has proven his claim that the loose overhanging ribs found on June 5, 1985, had existed since before the fatal accident on June 4th. The Secretary also maintains however that the operator was negligent because it had been warned of the dangerous rib conditions on June 5th by the fact that two other persons had previously been injured by rib rolls, by previous citations issued for dangerous ribs, and also "from a memo written concerning rib controls and no action was taken until after the fatal to control ribs in high coal bed."

The record shows that citations had been issued to Manalapan on September 4, 1984, for a violation of loose and overhanging ribs in another section of the mine and again on October 17, and November 9, 1984, for similar problems. I cannot find however that these violations constituted any notice of the rib conditions more than 6 months later on June 5, 1985, in another section of the mine. The mere existence of these prior violations without more, does not suggest that the operator was negligent on this occasion.

In addition, while MSHA Inspector Paul Helton noted on the citation issued September 4, 1984, that the operator needed a modification to his roof and rib control plan to take care of sloughing ribs, this was not made a condition of abatement nor was the operator subsequently required by MSHA to so modify its plan. Indeed the evidence shows that Inspector Helton's supervisor thought it would be "fruitless to pursue" such a requirement. Since MSHA itself therefore apparently did not deem such a modification to be sufficiently important to compel the operator to make such changes, either as a condition of abatement or as a condition in its roof and rib control plan, I find its argument now that the operator was negligent solely for failing to adopt such changes to be unpersuasive.

Manalapan is not totally without negligence however in light of its history of rib problems. The evidence is undisputed that in a 10 to 12 foot coal seam as here there is an increased danger of bursting ribs. Here there was also a history of rib rolls particularly during retreat mining and only partial pillar recovery. Moreoever based on the credible expert testimony of MSHA Special Investigator, Lawrence Layne, it is clear that the additional stresses placed upon the roof and ribs under such conditions clearly warranted additional safeguards to protect the miners from rib rolls. This evidence establishes that safe and accepted industry practice warranted such measures. The fact that Manalapan took no additional precautions, which were shown to be feasible, supports a finding of operator negligence.

Citation No. 2596793 alleges a "significant and substantial" violation of the standard at 30 C.F.R. § 75.304 and charges as follows:

> Sufficient and adequate on shift examinations had not been conducted in the 004-0 section, in that on 6-4-85 loose overhanging ribs were present, also the approved roof control plan was not being fully complied with in that turnposts were not set going into the pillar split, and only (3) roadway posts were set on 1 block outby the block being mined, and the power center for subject section was within 150 feet of the pillar being mined.

The cited standard provides in relevant part as follows:

> At least once during each coal-producing shift, or more often if necessary for safety, each working section shall be examined for hazardous conditions by certified persons designated by the operator to do so. Any such conditions shall be corrected immediately.

As noted, the Secretary's evidence has been found insufficient to sustain a finding that loose overhanging ribs were present on the 004-0 section on June 4, 1985. Manalapan acknowledges however that it was in violation of the approved roof control plan as cited in that turnposts were in fact not set into the pillar split and that only 3 roadway posts were set for 1 block outby the block being mined. The foreman in charge of the section, Gary Cochran, said that he was not even aware of the requirement to have line posts set before the second cut into the pillar. Manalapan also admits that the power center for the section was indeed within 150 feet of the pillar being mined. The existence of these violative conditions either through ignorance or by intent clearly supports the violation.

The Secretary concedes that these conditions were not the causative factors in the fatal rib fall on June 4, 1985, however it nevertheless maintains that the violation was "significant and substantial." I must agree. It may reasonably be inferred from the fact that inadequate on-shift examinations were being conducted in the 004-0 section that any number of hazardous conditions were not being detected. It may also reasonably be inferred from the failure to have corrected the two admitted violations that reasonably serious injuries would result. The violation is accordingly serious and "significant and substantial." Mathies, supra.

In determining the appropriate civil penalties in this case I have also considered that Manalapan is of moderate size and has a moderate history of violations. There is no dispute that the violative conditions cited in this case were abated as required by the Secretary. Accordingly I find that civil penalties of $500 for Citation No. 2596792 and $500 for Order No. 2596793 are appropriate.

ORDER

Manalapan Mining Company is hereby ordered to pay civil penalties of $2,000 within 30 days of the date of this decision.

Gary Melick
Administrative Law Judge

Distribution:

Karl S. Forester, Esq., Forester, Forester, Buttermore & Turner, P.S.C., Forester Building, First Street, P.O. Box 935, Harlan, KY 40831-0935 (Certified Mail)

Theresa Ball, Esq., Office of the Solicitor, U.S. Department of Labor, 280 U.S. Courthouse, 801 Broadway, Nashville, TN 37203 (Certified Mail)

rbg

The CHAIRMAN. What were the problems?

Mr. HELTON. At this particular mine, they had a very high coalbed that ranged from 10 to 11½feet high. And we had loose ribs in this coal mine that were as big as vehicles, hanging on the ribs. And every time I would go in there, I would issue citations for those loose ribs, to cause them to pull them down to keep them from falling on someone.

The CHAIRMAN. And did you try and get the company to do something about it?

Mr. HELTON. Yes, sir.

The CHAIRMAN. Did you get any response?

Mr. HELTON. Yes, sir. They said that it would cost too much money to try to control the ribs at that mine.

The CHAIRMAN. And was there a fatal ribfall at the mine two months later?

Mr. HELTON. Yes, sir, there was.

The CHAIRMAN. How old was the victim?

Mr. HELTON. I think he was around 28. His name was Richard Boggs.

The CHAIRMAN. Did you subsequently find that your copy of the memo you had written was missing?

Mr. HELTON. Yes, sir. The original memo that I had written from my files was missing, and the District and Sub-District have no knowledge of it, as far as I know.

The CHAIRMAN. So you wrote a memo to the District Manager to do something, and nothing was done, and then you never found the memo again?

Mr. HELTON. Right. I wrote one additional memo, and I had another inspector write an additional memo, requesting that the District and the Sub-District require this operator to implement provisions in the roof control plan for the controlling of the ribs, because we had had two individuals that I knew of with serious injuries, and I was afraid that in the future, we might have a fatality, which subsequently, we did.

The CHAIRMAN. Now, I understand a copy of that memo is contained in Mr. Layne's criminal investigative report; is that right, Mr. Layne?

Mr. LAYNE. Yes, sir.

The CHAIRMAN. Do you remember what it said?

Mr. LAYNE. Yes. The memorandum was written from Paul Helton to the District Manager, recommending that some provisions be implemented in the roof control plan to control the ribs, because the ribs were dangerous and unsupported.

[The memo referred to follows:]

U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
P.O. Box 572
Municipal Building
Barbourville, Kentucky 40906

MEMORANDUM FOR: District Manager, District 7

FROM: Paul D. Helton
Federal Coal Mine Inspector

SUBJECT: Review of Roof-Control Plan and Ventilation, Methane and Dust-Control Plan

The above named plans at the No. 1

Mine, I.D. No. 15-05423. [illegible] Mining Co. Inc.

Company, were reviewed 9-25-1984 and found to be:
Date

| | Roof Control | Ventilation |
|---|---|---|
| Adequate | ☐ | ☐ |
| Inadequate | ☐ | ☐ |
| Should be revised | ☒ | ☐ |

Explain reason for revising or justifications:

Two men being injured by falls of Ribs in the 010-0 and also the 004-0 Section because Rib-controls were not included for the 12 ft coal bed height, Provisions need to be implemented to control ribs in subject area citation issued No. 2473792 Issued 9-4-84,

Mine Citation/Order Continuation

U.S. Department of Labor
Mine Safety and Health Administration

1. Dated Mo Da Yr: 090484
2. Citation/Order Number: 2473792-02
3. Subsequent Action ☒ Continuation ☐
4. Date Mo Da Yr: 101784
5. Inspector: 1115
6. Served To: Ralph [illegible]
7. Operator: [illegible] Mining Co. Inc.
Mine: No 1
8. Mine ID: 15-05423
(Contractor)

Justification For Action

75-202
The operator removed all loose ribs in the 05-0 Section and also at the 3rd crosscut along No. 10 piggy back belt old supply hole was timbered and the area gobbed off with [illegible] to prevent anyone from entering the area.

9. Extended To ☐ 9a Date Mo Da Yr 9b Time (24 hr clock)
10. Vacated ☐ Terminated ☒ Modified ☐
11. See Continuation Form ☐
12. Type of Inspection: CCA
13. Event Number: 5300283
14. Signature
AR Number: 36486

MSHA Form 7000-3a, Aug 78 (revised)

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

Being [illegible]

Section I—Violation Data

1. Type of Issuance (check one): Citation ☒ Order ☐ Safeguard ☐

2. Date: 09 04 84

3. Time (24 hr. clock): 1000

4. Citation/Order Number: 2470732

5. Served To: Ralph Rogers

6. Operator: Meadowlark Mining Co. Inc.

7. Mine: No. 1

8. Mine ID: 15-09423 (Contractor)

9. Type of Action: 104-a

10. Violation: A. Health ☐ Safety ☒ Other ☐ B. Section of Act C. Part/Section of Title 30 CFR: 75.202

11a. Significant and Substantial (see reverse) ☒

11b. Written Notice ☐

12. Condition or Practice

Loose overhanging (ribs) were observed at various locations in the 010-0 section (2) places in the No. 3 room ~~[illegible]~~ on right and left rib and right and left rib in the belt entry from feeder to the last open cross cut moving rib or (1) place approximately 15' long and 2x2 feet wide and high approximately 3 crosscuts inby the No. 10 piggy back belt at supply hole area on section and off the section needs to be taken down or supported

13.

The Roof Control plans approved plans has no provisions for supporting ribs. Coal from 10 to 12 feet high ribs very bad needs provisions for supporting loose ribs.

14. Initial Action: Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐

15. Citation/Order Number

16. Dated: Mo Da Yr

17. Termination Due: A. Date 09 04 84 B. Time (24 hr. clock) 1300 C. Signature Paul O. Mitchell D. AR Number 50456 ☐ See continuation form (MSHA Form 7000-3a)

Section II—Termination Action

18. Action to Terminate

19. Terminated: A. Date Mo Da Yr B. Time (24 hr. clock) C. Signature D. AR Number

Section III—

20. Negligence (check one): A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☒ E. Reckless Disregard ☐

21. Gravity

A. The occurrence of the event against which the cited standard is directed was:
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☒ Occurred ☐

B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be:
No lost workdays ☐ Lost work days or restricted duty ☐ Permanently Disabling ☐ Fatal ☒

C. Number of persons who would be affected if the event occurred or were to occur: 01

22. Good Faith

A. Failure to abate within the time period given ☐

B. Signature

C. AR Number

Section IV—Automated System Data

23. Type of Inspection (activity code): BAA

24. Event Number: 5279479

25. Primary or Mill

MSHA Form 7000-3, Apr 82 (revised)

The CHAIRMAN. I thought, Mr. Layne, that you said earlier that you had submitted that report to agency headquarters quite a while ago, and nothing happened until a week or so ago, when you were advised by the Solicitor's Office that prosecution has been declined; is that right?

Mr. LAYNE. That is true, sir.

The CHAIRMAN. We requested that report from the agency last week, to obtain a copy of that memo, and have been told we cannot have it because the case has been reopened. Does that make any sense to you?

Mr. LAYNE. No, sir.

The CHAIRMAN. Mr. Helton, did you also conduct inspections at the Berger Number 2 Mine?

Mr. HELTON. Yes, sir, I did.

The CHAIRMAN. And did you issue citations and closure orders there?

Mr. HELTON. Yes, sir, I did.

The CHAIRMAN. Was the mine in bad condition?

Mr. HELTON. Very bad condition.

The CHAIRMAN. And did the mine owner complain?

Mr. HELTON. Yes, he did.

The CHAIRMAN. Were you taken off the inspection?

Mr. HELTON. Yes, I was.

The CHAIRMAN. And was there subsequently a multiple fatality at the mine?

Mr. HELTON. Yes, sir.

The CHAIRMAN. What happened?

Mr. HELTON. There was a fatality involving four men, one of which was Mr. Simpson's son. They were cleaning, wiping all the pillars out with a Wilcox mining machine—which you are not supposed to do second mining with the Wilcox; that is a conventional mining machine, and they were doing pillar recovery with it, which you are not supposed to do.

The CHAIRMAN. And where were you when that happened?

Mr. HELTON. I was in Beckley, West Virginia, for retraining.

The CHAIRMAN. So, Mr. Helton, things do not seem to have changed much since Mr. Scaff left. What can be done so that you can do your job as you are supposed to?

Mr. HELTON. I think we ought to be able to, as inspectors—they hire us for our expertise and our knowledge in the mining industry—we ought to be able to be left alone from our supervisors, our front-line supervisors and the higher officials, and let us enforce the law as it is written.

The CHAIRMAN. I understand that you had a family tragedy a week ago—your mother passed away.

Mr. HELTON. Right.

The CHAIRMAN. I know it was difficult for you to come here today, under these conditions. I understand you told her before she died that you were going to come here, and she said that she thought you should. So I appreciate very much your doing so.

Mr. HELTON. Yes, sir.

The CHAIRMAN. Mr. Simpson, we are very grateful for your presence here. As I mentioned earlier, we know that you have made a very special effort to join us.

Was one of your sons killed in the roof-fall at the Berger Number 2 Mine?

Mr. SIMPSON. Yes, sir. I had one son killed in that accident.

The CHAIRMAN. How long had he worked as a miner before that?

Mr. SIMPSON. He had been a coalminer for about eight years.

The CHAIRMAN. How many sons did you have?

Mr. SIMPSON. I had five.

The CHAIRMAN. How many of them were working in the mine that day?

Mr. SIMPSON. I had four sons in the same mine the day that the accident occurred.

The CHAIRMAN. Did two of your other sons narrowly escape being killed?

Mr. SIMPSON. One son who was working opposite the one that got killed, the rock fell on him from 75 feet, and it was mashing him down, and when it hit what we call the bridge, it careened, and that is the only thing that saved his life.

The CHAIRMAN. Was the mine in bad condition?

Mr. SIMPSON. The mine was in bad condition.

The CHAIRMAN. Did your sons know the roof was weak?

Mr. SIMPSON. No, sir, I don't think they knew it was real weak. The Mine Superintendant and foreman knew that they were not supposed to pull a pillar with a Wilcox Miner and take all the coal out. Large two inch cracks were pointed out to the foreman that morning. The foreman told the men mine the rest of that pillar or be fired. The Wilcox Miner was started and the rock fell on the men.

They discussed that with me two days before that. And the day before that, my son, the one that got killed, he discussed that with me that night, and he asked me if I would go to MSHA and notify them about what they were doing up there. And I started to the office about 8:30 that morning, and by the time I got to Harlan, I knew the accident had happened, so I figured it would be no use to go into the MSHA office then.

The CHAIRMAN. Do you know whether MSHA inspectors had been at the mine before the roof fell?

Mr. SIMPSON. I do not think within 30 days.

The CHAIRMAN. Why were your sons working in the mine if they knew it was not safe?

Mr. SIMPSON. Well, Mr. Kennedy, I will tell you, they have got families, and they had to work somewhere. My son, the one that got killed, told me the night before he got killed that Friday would be his last day, and the other boys were going to quit with him, and they were going West, to bigger and better mines.

The CHAIRMAN. So the day of the mine tragedy, they had big plans togo to a different mine, or a different part of the country; is that right?

Mr. SIMPSON. The following Friday, they were going to quit and go.

The CHAIRMAN. Is there high unemployment in the area?

Mr. SIMPSON. Yes, sir, it is very high.

The CHAIRMAN. And did they close the mine?

Mr. SIMPSON. They closed the mines, and they let the mines back out—they contracted the mines back out to two other men, and I think they worked it about two weeks, and they caught the mines on fire by electrical fire, and they had to shut it down again.

The CHAIRMAN. Have your other sons been able to find other jobs since then?

Mr. SIMPSON. No, sir.

The CHAIRMAN. Was there a criminal investigation conducted?

Mr. SIMPSON. There was.

The CHAIRMAN. And did your sons testify at the grand jury?

Mr. SIMPSON. They testified at the grand jury in 1985.

The CHAIRMAN. And have you heard anything since then?

Mr. SIMPSON. I have not heard anything.

The CHAIRMAN. Do you know Paul Helton?

Mr. SIMPSON. I do.

The CHAIRMAN. And is he a good inspector?

Mr. SIMPSON. He is a good man; he is a good inspector.

The CHAIRMAN. And did he try to do something about the conditions of the mine?

Mr. SIMPSON. He sure did.

The CHAIRMAN. What can be done to stop such needless and tragic accidents as this?

Mr. SIMPSON. I think the operators should let a man do his job, make an inspection; that is what he is there for. I do not think he ought to call his district office and try to get rid of him. I know for a fact that this man here has been called on and tried to get run off of mines to make his inspections. I do not think that should be. I think he should be allowed to make his inspections, and if there is something wrong, correct it.

The CHAIRMAN. And that is what the miners expect, isn't it?

Mr. SIMPSON. That is what the miners expect. They want that inspector there.

The CHAIRMAN. Well, that is what the members of Congress and the Senate expect, too, because they wrote the law to do just that. It seems to me that some of the district managers clearly are not doing their jobs.

Mr. Finnie, what is your present position?

Mr. FINNIE. I am the Senior Special Investigator for Mine Safety and Health Administration, District 8.

The CHAIRMAN. And how old are you?

Mr. FINNIE. I am 40, sir.

The CHAIRMAN. And did you serve in the Marine Corps in Vietnam?

Mr. FINNIE. Yes, sir, I did.

The CHAIRMAN. And what medals and citations did you receive?

Mr. FINNIE. I earned the Vietnamese Cross of Gallantry with Palms; the Navy Commendation Medal and two Purple Hearts.

The CHAIRMAN. How long have you been with the Mine Safety and Health Administration?

Mr. FINNIE. Since January of 1978.

The CHAIRMAN. And did you conduct a criminal investigation concerning activities at a mine owned by the Peabody Coal Company?

Mr. FINNIE. Yes, sir, I did.

The CHAIRMAN. And where was that mine located?

Mr. FINNIE. In Southern Illinois, near Shawneetown.

The **Chairman**. And was there an accident at the mine?

Mr. **Finnie**. Yes, sir, there was.

The **Chairman**. Was a miner killed?

Mr. **Finnie**. Yes, sir.

The **Chairman**. Can you tell us what happened and why you conducted a criminal investigation?

Mr. **Finnie**. Well, the Benton, Illinois Sub-District Office was notified that there had been a problem at the mine. And Ed Ritchie, a Special Investigator who works for me, was dispatched to the mine along with a roof control specialist. At that time, the victim had been removed; he was only injured at that time, but he died two days later, on Christmas Eve, as I recall. During the course of the investigation, Mr. Ritchie reported to the Sub-District Manager and to me that it was clear that a large number of very blatant violations had taken place in connection with this accident.

The **Chairman**. And has the Peabody Coal Company been previously convicted because of a similar accident?

Mr. **Finnie**. They have been convicted in Western Kentucky as a result of having falsified some dust sampling records.

The **Chairman**. Falsifying what?

Mr. **Finnie**. Some records which are required to be maintained by the Act.

The **Chairman**. Did you work with the U.S. Attorney's Office in East St. Louis in a recent case—in this case?

Mr. **Finnie**. Yes, sir, I did.

The **Chairman**. And did the Grand Jury return a criminal indictment?

Mr. **Finnie**. Yes, sir.

The **Chairman**. When was that?

Mr. **Finnie**. This was in November of, I believe, 1985, sir.

The **Chairman**. What did it charge?

Mr. **Finnie**. They charged, I believe it was 12 counts; they charged five individuals and two counts against Peabody Coal Company.

The **Chairman**. Did the company subsequently plead guilty?

Mr. **Finnie**. Yes, sir, they did.

The **Chairman**. And what was the sentence?

Mr. **Finnie**. Each of the mine foremen and agents of the operator who had been involved in the clean-up of this roof-fall were placed on pre-trial diversion for two years, and Peabody received the maximum fine of $25,000 for each count.

The **Chairman**. For each?

Mr. **Finnie**. Yes, sir.

The **Chairman**. Is Peabody the largest coal company in the country?

Mr. **Finnie**. Yes, sir, it is.

The **Chairman**. As a result of your work on this case, did your District Manager nominate you for the Investigator of the Year Award?

Mr. **Finnie**. Yes, sir.

The **Chairman**. I understand this is an award given each year by the National Association of Federal Investigators as a recognition of excellence; is that correct?

Mr. **Finnie**. Yes, sir, it is.

The CHAIRMAN. And it is quite an honor to be nominated for that award, is it not?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. And did your District Manager in his nomination of you emphasize the significance of the case and the excellent manner in which you conducted the investigation?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. And did he state that, "Mr. Finnie's efforts in this case truly portray both him and the Mine Safety and Health Administration as guardians of the public welfare and trust, as Congress intended them to be"?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. And was the nomination supposed to be submitted to your agency by July 3rd, 1986?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. And was it sent by Federal Express, to make sure it arrived on time?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. And I understand the deadline set by the National Association of Federal Investigators was not until July 15, 1986; is that correct?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. This is a receipt for a July 2nd date; the deadline was the 15th.

[Information supplied follows:]

**U.S. Department of Labor**

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

RECEIVED
AUG 25 1986
Mine Safety and Health
Administration
Vincennes, IN.

AUG 21 1986

CMS&H Memo No. HQ-86-446-I (1302)

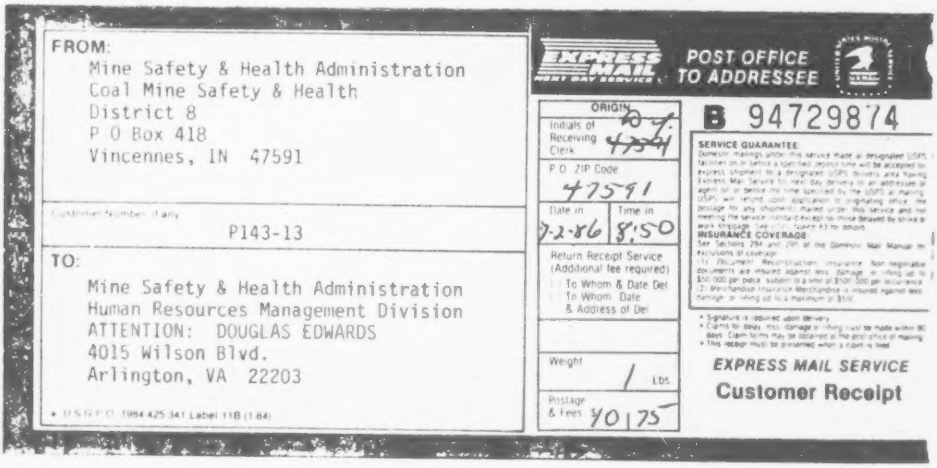
MEMORANDUM FOR MAURICE CHILDERS

FROM: DENNIS M. RYAN
Acting Chief, Office of Technical Compliance
and Investigation

SUBJECT: Nomination for "Investigator of the Year"

Your nomination of Michael Finnie for the award referenced above was unfortunately not processed in time to meet the Association of Federal Investigators deadline for consideration. While Mr. Finnie was not assured of selection in this competition, perhaps you can find another award or form of recognition for his achievements.

Should you have any questions or require any assistance, please let me know.



FROM:
Mine Safety & Health Administration
Coal Mine Safety & Health
District 8
P O Box 418
Vincennes, IN 47591

Customer Number (If any)
P143-13

TO:
Mine Safety & Health Administration
Human Resources Management Division
ATTENTION: DOUGLAS EDWARDS
4015 Wilson Blvd.
Arlington, VA 22203

U.S.G.P.O. 1984 425 341 Label 11B (1-84)

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(202) 466-7288

# Recognition of Excellence

## 1986 Awards Nomination Form

Deadline July 15, 1986

Awards Categories

Awards will be given to Federal employees who have demonstrated outstanding performance in a single case or over a long term in sustained achievements. Nominations are to be submitted by agencies and limited to 3 (three) in rank order of endorsement. If an agency chooses not to submit nominations, this form must be returned indicating no nominations are offered this year.

Selections will be notified in September with presentations made at the annual black tie (optional) awards banquet and ceremony November 7, 1986 at the Stouffers Concourse Hotel, Arlington, VA.

Check Award Category

A. Federal Investigator of the Year Award -

- _____ Criminal Investigator of the Year - Given to a Federal investigator for successful performance of duties in enforcing laws under the U.S. Criminal Code.
- _____ Financial Investigator of the Year - Given to a Federal investigator for successful performance of duties relating to untangling complicated criminal financial schemes.
- _____ Security/Counterintelligence Investigator of the Year - Given to an investigator for successful performance of duties relating to gathering information and conducting activities to protect against sabotage, assassination, and international terrorist activities including personnel, physical, document, and communications security.
- _____ Fraud Investigator of the Year - Given to a Federal investigator for successful performance of duties relating to unraveling of concealed white collar crimes characterized by guile, deceit, and misrepresentation of fact.
- XX General Investigator of the Year - Given to the Federal, civil, and administrative investigator for successful performance of duties relating to enforcing the rules, regulations, and laws of the United States.

B. _____ Law Enforcement Leadership Award - Given to a Federal investigative executive for significant contributions to our profession.

C. _____ Legal Award - Given to an attorney who has demonstrated highest quality of professionalism through successful and innovative prosecution of Federal cases in the court system.

D. _____ Legislative Award - Given to a member of Congress who has supported the Federal law enforcement community and the justice system legislatively.

E. _____ Public Service Award - Given to an individual for outstanding contributions to public service on behalf of the public interest in safety and crime prevention.

F. _____ Special Achievement Award - One or more awards to individuals who have made special, significant contributions to law enforcement which do not easily fit into other categories, such as, investigative management or unique contributions.

## NOMINATION INFORMATION AND INSTRUCTIONS

1. Nominations should be typed or neatly hand-printed.
2. Nominations are limited to 3(three) individuals in rank order of endorsement by an agency. If there are no nominations, please return this form indicating no nominations.
3. Nominations should be postmarked by July 15, 1986 and sent to:

   National Association of Federal Investigators
   1612 K Street, NW, Suite 202
   Washington, D.C. 20006

4. Selections and arrangements to attend the Annual Awards Banquet will be completed in September, 1986. The Banquet will be at the Stouffers Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia on Friday, November 7, 1986.

## PROFESSIONAL HISTORY

NOMINEE'S FULL NAME: Michael Gordon Finnie

A. RELATED EMPLOYMENT:

Employed with the Mine Safety and Health Administration since January 15, 1978. Promoted to present position December 12, 1982. Serves as District's team leader or technical advisor in programs and activities involved with the enforcement of Title I of the Federal Mine Safety and Health Act of 1977, by investigating and recommending appropriate action to be taken on discrimination complaints and possible civil and/or criminal violations. Coordinates implementation of policy changes mandated by the Federal Mine Safety & Health Review Commission and Courts. Initiates and manages the planning, implementation, direction, coordination, and evaluation of investigations and technical compliance activities. Responsible for final review of investigative reports. Responsible for workload distribution of assignments in his jurisdiction and for coordination with MSHA's Office of Technical Compliance, the Office of the Solicitor and other personnel. Conducts and reviews special investigations and accident investigations and conducts analysis as to cause, possibility of willful violations and reviews and recommends action on civil and criminal violations.

B. EDUCATION:

A. S. Degree, Business Management
A. S. Degree, Coal Mining Management
Graduate of Federal Criminal Investigator Course at Glynco, Tennessee on August 4, 1981. First MSHA employee to attend this training.

C. LIST AWARDS:

Merit Increase - October 2, 1983
Merit Increase - December 8, 1984
Performance Management and Reward System Merit Increase - October 13, 1985
Performance Management and Reward System Merit Increase - March 30, 1986

D. PROFESSIONAL AFFILIATIONS:

E: OTHER DISTINCTIONS & ACTIVITIES:

Veteran of Viet Nam conflict

AWARD JUSTIFICATION: Provide a specific narrative outlining justification to award and dates related to accomplishments and/or contributions. (Attachments though not encouraged, may be included. Additional space for justification is provided on page 4.)

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Michael G. Finnie, Senior Special Investigator, Mine Safety and Health Administration, Coal Mine Safety and Health, District 8, is nominated for Investigator of the Year in the General Investigator category in recognition of his work in an extensive investigation which resulted in criminal charges being brought against one of the major corporations in the mining industry, pursuant to the Federal Mine Safety and Health Act of 1977 (Mine Act). Section 110 of the MINE ACT specifically provides for civil or criminal penalties for corporations or their agents who knowingly or willfully violate Federal safety and health regulations governing the mining industry.

The case was initiated through the investigation of a roof fall accident (mine collapse) which resulted in the death of one foreman and lesser injuries to another foreman and two workmen. Mine operators are compelled by law (Title 30 CFR, 75.200) to allow work only under properly supported mine roof, and to submit to the Mine Safety and Health Administration for approval a plan for supporting and maintaining the roof (ceiling) of coal mines. Evidence at the scene of this particular accident strongly suggested that the death and injuries occurred because workmen, at the direction of their supervisors, had been routinely working and traveling beneath unsupported roof in direct violations of these Federal regulations, and in violation of the approved Roof Control Plan for the mine. The evidence also indicated that the workmen, at the direction of their supervisors, had already cleaned up the massive rock fall (which was approximately 60 feet long and up to 30 feet in height) with a scoop while continuing to work under roof which was not properly supported, exposing themselves to the same hazards and potential for injury or death as the men who had been injured earlier, and further violating Title 30 CFR 75.200. Stockpiles of steel arches found near the center of the fall area gave further indication that work was taking place under unsupported roof.

The Mine Safety and Health Administration began its investigation, under Mr. Finnie's direction, on December 22, 1982, to determine whether the corporation and agents of the corporation, had knowingly or willfully authorized, ordered, or carried out these violations of mandatory safety and health standards. MSHA's investigation was completed on September 23, 1983, after exhaustive examination of evidence and interviewing of the more than 50 persons involved. On January 16, 1984, the case was referred to the U. S. Attorney for the Southern Illinois District. Grand Jury proceedings were begun shortly thereafter and indictments were handed down in November, 1985 for criminal violations of Section 110 of the MINE ACT. In June, 1986, the corporation pled guilty to all counts and all defendants were placed on a pretrial diversion for two years. During these two years, these defendants must personally supervise the rehabilitation of all roof falls which occur at the mine. If, during these two years, the defendants are found to have violated any criminal provision of the MINE ACT, they will be prosecuted on the original charges in addition to the new charges. The GOVERNMENT is recommending a $40,000 assessment (fine) on each of the counts against the corporation.

This case is highly significant for the following reasons: (a) This is a major corporation in the mining industry, whose precedents are frequently quoted and followed by other corporations in the industry; (b) This corporation was previously convicted of similar violations of the MINE ACT. It is the GOVERNMENT'S position that this being a second conviction against this corporation, all of the counts are felonies. This is the first time that this has occurred under the MINE ACT; (c) This case has far-reaching effects on the coal mining industry, both in terms of operator attitudes and the health and safety of the miners.

(Continued on reverse)

Mr. Finnie directed this investigation in a superbly professional manner. His personal participation, as well as his assistance to other MSHA personnel, gathered the highest accolades from the U. S. Attorney's Office. His dedication in guiding the case through to its conclusion reflects brilliantly on the Mine Safety and Health Administration, on Mr. Finnie himself, and on the integrity and ability of government investigators in general. Mr. Finnie's efforts in this case truly portray both him and the Mine Safety and Health Administration as guardians of the public welfare and trust, as Congress intended them to be.

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CITATION: Provide an appropriate citation, not to exceed 100 words, suitable for use at the 20th Annual Awards Banquet to be used both in presenting the award to the honoree and as an enclosure in our brochure

THIS AWARD IS PRESENTED TO MICHAEL G. FINNIE, SENIOR SPECIAL INVESTIGATOR, MINE SAFETY AND HEALTH ADMINISTRATION, COAL MINE SAFETY AND HEALTH, DISTRICT 8, IN RECOGNITION OF OUTSTANDING WORK IN THE INVESTIGATION OF A HIGHLY SIGNIFICANT AND CONTROVERSIAL CASE CONCERNING SAFETY IN THE MINING INDUSTRY; OF OUTSTANDING PERSONAL DEDICATION TO THE SAFETY AND HEALTH OF THE NATION'S COAL MINERS; AND OF PERSONAL SKILLS AND DEDICATION WHICH EXEMPLIFY THE GOALS OF ALL GOVERNMENT INVESTIGATORS AS GUARDIANS OF PUBLIC WELFARE AND TRUST.

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NOMINEE:

Full Name Michael Gordon Finnie

Position Title Senior Special Investigator

Agency Mine Safety and Health Administration Coal Mine Safety & Health, District 8

Address 501 Busseron Street

Vincennes, Indiana ZIP: 47591

ffice Telephone (812) 882-7617

ome Telephone (812) 882-7138

NOMINATOR:

Full Name & Signature Maurice S. Childers

Maurice S. Childers

Position Title District Manager

Agency Mine Safety and Health Administration Coal Mine Safety & Health, District 8

Address 501 Busseron Street

Vincennes, Indiana ZIP: 47591

Office Telephone (812) 882-7617

Home Telephone (812) 882-2164

The CHAIRMAN. Was the next thing you heard a memo almost two months later from Dennis Ryan, the Acting Chief of Investigations in Arlington?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. And did it state that, "Your nomination was unfortunately not processed in time to meet the deadline of the National Association of Federal Investigators," and that, "perhaps your District Manager can find another award as form of recognition for your achievements"?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. And I am sure you are aware by now that the indictment of the Peabody Company for which you were nominated did not please Mr. Zegeer, the Assistant Secretary in charge of MSHA at the time; are you not?

Mr. FINNIE. That was my understanding, yes, sir.

The CHAIRMAN. And as a result of the indictment, Mr. Zegeer wrote a memorandum ordering that "a system be established to preclude situations like this from happening in the future"?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. And that memo was introduced in the Committee hearing last September, and I would like to make it and the response to it a matter of record in this hearing.

[The memos referred to follows:]

U. S. Department of Labor

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

December 19, 1985

MEMORANDUM FOR JOSEPH A. LAMONICA

FROM: DAVID A. ZEGEER

SUBJECT: Peabody Case No. 84-0046

Pursuant to our meeting of November 25 in which you informed me of the indictment of officials of the Peabody Coal Company, Case No. 84-0046, I have reviewed the file and have made the following observations regarding this case.

I have had quite a lot of experience in installing arches in haulageways and know that each situation is different and requires a subjective evaluation based on the prevailing mining conditions. For example, in some cases, if ventilation is directed over the fall, the roof can be bolted with stopers before the fallen material is cleaned-up. This can be a hazardous means of installing supports, since a second fall could occur during this process. Furthermore, once the fall is loaded-out, overhanging ribs can pose a problem. Prior to installing arches, the preferred approach would be to ensure that the roof and ribs are thoroughly scaled. However, this procedure, as in the Peabody case, is hazardous per se and cannot offer complete protection. Therefore, I intuitively find myself in agreement with Mr. Hansen in that bolting the entire area along with the brows and ribs that arch the fallen area is a very hazardous operation.

A good deal of information in the file supports this observation as indicated by the information contained in the April 1982 Coal Age article by Roger M. Hansen, "Arches Can Ease Roof-Fall Repair." The article's theme is that use of arches is safer than rebolting, an argument which indicates that supporting the roof before arching would constitute a greater hazard. The same article also mentions that the bolting operation above falls is a dangerous procedure and then mentions that no bolting, back-filling, or cribbing is needed and that future maintenance is eliminated by the use of the arches. These statements contradict the assertion that it is wrong, and in this particular case criminal, to install arches without having first rebolted the area. Another statement made in the same Coal Age article is: "The unpredictable nature of installation techniques and loading conditions at any given mine prevents this (rebolting) practice. They generally urge individual mine operators to review available data and develop specific procedures for their own application that meet all requirements for safe work conditions." Furthermore, in Mr. Hansen's December 13, 1983 letter to John A. McCormick of the Bruceton Safety Technology Center, he makes several statements that are also pertinent:

(a) "Experience over the years has proven that using arches to repair fall areas is safer and faster than rebolting and cribbing. The hazards associated with tilting an arch into place are no worse than those of setting a temporary safety jack. In fact, the proper procedure is the same for both - set the base first and then tilt toward the face. In the unique circumstances around fallen areas, installing roof bolts can actually be more hazardous than setting arches."

(b) Citing the salient points that need to be considered, he states:

> "Arches used in roof fall repair can be considered to act as (or in lieu of) permanent roof supports. The contribution of bolts or other materials can be disregarded once the arches are in place, even if they do not directly contact the roof."
>
> "Arches can safely be installed without prebolting and this, in fact, eliminates the even greater hazards associated with installing bolts. Setting an arch is no different nor any more hazardous than setting a temporary roof jack."

It is my opinion this whole scenario was strictly a judgement call as to which installation technique was safer, given the conditions at that mine, and whether or not the rock would fall. From the information available, it appears that both Johnnie Jones and Elmer McCuan can give testimony concerning attempts to bring down the rock which subsequently fell and caused the death of the foreman. Had the rock not fallen, the judgement call would have been good. Consequently, I feel that the Peabody case constitutes pursuit of an adverse result of a judgement, rather than an action involving criminal intent. Further, I cannot understand the steps being taken to indict the individuals involved in this incident, nor can I see how we can hope to improve the safety performance of mining personnel if we inhibit their ability to make the judgemental decisions so necessary in the day-to-day situations which they encounter.

In view of the above discussion, I hope that you are formalizing review procedures for possible criminal actions which will preclude situations like this in the future.

David A. Zegeer

MAR 11 1986

MEMORANDUM FOR DAVID A. ZEGEER

FROM: JOSEPH A. LAMONICA [Sgd JOSEPH A. LAMONICA
Administrator
for Coal Mine Safety and Health

ROY L. BERNARD RLB
Administrator for
Metal and Nonmetal Mine Safety and Health

SUBJECT: Procedures for Referrals to the
Department of Justice

In response to your memorandum of December 19, 1985, we are implementing the following procedures to refer possible criminal violations of the Mine Act to the Department of Justice or United States Attorneys:

1. Once a preliminary review of the case indicates that the technical elements necessary to establish a possible criminal violation of the Mine Act are present, the matter will be evaluated to determine if there are mitigating circumstances present which do not make the situation appropriate for prosecution.

2. This evaluation will involve insuring that the factors listed below were fully considered at the field level. In addition, an independent review of these factors will be made by the Headquarters staff. The factors to be considered are:

   a) Are the accident and injury rates at the mine worse than those at other similar operations?

   b) Does the enforcement history at the mine indicate that the operation has been subject to other sanctions such as 104(d) orders or 104(b) orders on a recurring basis?

   c) Is this a situation where a good faith dispute existed between MSHA and the operator over the proper method of dealing with a particular condition or practice?

d) Do the anticipated positive benefits of a criminal prosecution in this case outweigh any possible negative factors which could affect health and safety efforts?

3. Following this review, the case will be referred to the Office of the Solicitor for an independent review for legal sufficiency.

4. If these reviews result in a tentative determination that the case warrants referral to the Department of Justice, the matter will be forwarded to the Office of the Administrator to determine if there are other mitigating circumstances that should be considered prior to forwarding the case to the Assistant Secretary. A briefing will then be scheduled with the Assistant Secretary which will include a discussion of all factors considered, including the advantages and disadvantages of proceeding with a referral of the case to the Department of Justice.

cc: J. Lamonica T. Mascolino
ARF W. Forbes
R. Bernard
R. Schell
MSHA Files, Rm. 735A, Code: 6033 (Special Investigations)
MC:RSCHELL:klo:2/28/86

The CHAIRMAN. Mr. Finnie, do you think Mr. Zegeer's attitude toward your achievement had something to do with your nomination not being processed in time?

Mr. FINNIE. I do not have any direct knowledge. I was told by some people who work in Arlington that that was true, yes, sir.

The CHAIRMAN. What have your performance ratings been for the past few years?

Mr. FINNIE. I have been rated as "highly effective" for the past five performance evaluations.

The CHAIRMAN. Did you receive a performance evaluation by your District Manager in September 1986?

[The performance evaluation follows:]

**Performance Standards and Appraisal for Managers and Supervisors**

**U.S. Department of Labor**

Instructions: Sections 1 through 4 and the first two columns of Section 6 will be completed by the supervisor after coordination with the manager, at the beginning of the appraisal period. Section 5 and the remainder of Section 6 will be completed at the end of the appraisal period.

**1. Name of Manager**

MICHAEL G. FINNIE

**2. Title and Grade**

Senior Special Investigator, GM-13

**3. Organizational Location**

MSHA, Coal Mine Safety and Health
District 8 Office
Vincennes, IN

**4. Establishment of Critical Elements, Noncritical Elements and Performance Standards**

a. Appraiser Certification After Discussion With the Rated Manager

Maurice S. — 12-21-83
Signature of Appraiser — Date

b. Manager Response

My supervisor has ☒ has not ☐ discussed these standards and critical elements with me.
I have ☐ have not ☒ included written comments on these performance standards.

Michael G. Finnie — 12-21-83
Signature of Manager — Date

c. Higher Level Review

☒ These elements and standards have been reviewed and are approved.

J. A. Lamonica — 12-29-83
Signature of Reviewer — Date

**5. Appraisal of Performance**

a. Appraisal Period

From 1/2/84 to 9/25/84

b. Type of Appraisal

☒ Scheduled ☐ Unscheduled

c. Supervisory Appraisal of Performance (Check the definition which describes the manager's overall performance during the rating period and sign below.)

☐ Outstanding Performance — Performance exceeds the described level in the performance standards for all critical elements and for 50 percent of the other elements. Performance does not fall below the standard for any element of the job.

☒ Highly Effective Performance — Performance exceeds the described level in the performance standards for 50 percent or more of the critical elements. Performance does not fall below the standard for any element of the job.

☐ Fully Successful Performance — Performance fully meets the described level in the performance standards for all critical elements and for 50 percent or more of the other elements of the job.

☐ Minimally Satisfactory Performance — Performance needs to improve in one or more critical elements, and/or needs to improve in more than 50 percent of the noncritical elements of the job.

☐ Unacceptable Performance — Performance fails to meet the described level in the performance standard for one or more critical elements of the job.

9-27-84
Signature of Appraiser — Date

d. Manager Response

My supervisor has ☒ has not ☐ discussed this appraisal with me. I have ☐ have not ☒ included written comments on this appraisal.

Michael G. Finnie — 10-4-84
Signature of Manager — Date

e. Higher Level Reviewer

☐ I have reviewed and concur with this appraisal.

Signature of Reviewer — Date

DL 1-382B September 1981

**5. Performance Standards and Appraisal** (See the Performance Appraisal Handbook for Supervisors for instructions on developing job elements, performance standards and completing appraisals or consult your servicing personnel office.)

| Job Element/Objectives | Performance Standard | Narrative Performance Appraisal |
|---|---|---|
| List the major objectives or responsibilities of the job.<br>(Check One) ☒ Critical ☐ Necessary<br>(Check One) ☒ Organizational Performance ☐ Managerial Effectiveness ☐ Technical Ability | For each job element/objective list one standard (and more if necessary). A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quantity and quality, as appropriate. The methods of measurement should also be included, when practicable. | In completing this Section (1) state whether the manager has met, exceeded (greatly exceeded), needs improvement, or has failed to meet the requirements of the element as measured by the standard and (2) provide a brief explanation of the basis of the rating. |
| 1. Plans, coordinates, reviews or conducts (as necessary) the Special Investigations activities in the District, subject to the policy of the District Manager, in reference to sections 105(c), 108(a) and 110 of the Federal Mine Safety and Health Act of 1977. | 1. Performance is fully successful when the following activities are accomplished during the fiscal year.<br>a. All special investigation activity in the District is procedurally correct and in accordance with established guidelines and policies.<br>b. Final investigative reports issued by the District Special Investigations unit are complete, technically accurate, of sufficient relevant content, and are submitted within established time frames. Clerical duties related to the processing of investigative reports are performed in a uniform manner, and in accordance with established guidelines.<br>c. Possible Willful and Special Assessment violations are reviewed and screened for technical correctness and compliance with established criteria. | The standard was exceeded. Review of special investigations activities by the Office of Technical Compliance revealed a vast improvement in the District's program. The incumbent was commended for the dedication and professionalism of all persons in the District who are involved in the program. Incumbent has conducted traning for all complaint processors, including step-by-step instructions and regular contact by phone and personal visits to insure adherence to policy. Since the completion of this training, no cases have been returned to either investigators or processors for any reason. All Possible Willful and Special Assessment violations are screened and those which to not meet the criteria are returned to the originating office. Incumbent prepared and presented training on Possible Willful and Special Assessments to personnel involved in this program. |
| (Check One) ☐ Critical ☐ Necessary<br>(Check One) ☐ Organizational Performance ☐ Managerial Effectiveness ☐ Technical Ability | Quality of performance is measured based on (1) the demonstrated knowledge, performance and capabilities of District Special Investigators and complaint processors; (2) the relevant content, completeness and technical accuracy of the final reports; (3) the integrity of violations submitted to the District Manager for final review; and (4) the completeness and accuracy of the recording and filing system maintained by the Senior Special Investigator. | |

| | | |
|---|---|---|
| Check One: [illegible] ☒ [illegible] | the Special Investigations promotes MSHA and District M objectives in a manner that clearly reflects established Agency policy. District and MSHA commitments and obligations are met within agreed upon timeframes. Representational activities will be measured by feedback from industry and labor and by a year-end accomplishment report including the method by which policy matters were set forth. | promotes the interests and policies of the District and MSHA in a highly professional positive manner. His frequent contacts with upper level corporate officials provide him with the opportunity to present and clarify MSHA policies and requirements at the highest levels of management. Feedback from industry and labor have been very positive, creating a cooperative environment for the completion of the mission of the Agency. |
| 2. Represents MSHA and District in a capacity in dealing with industry and labor. | | |
| Check One: ☒ [illegible] ☐ [illegible]<br>Check One: ☐ [illegible] ☒ [illegible] ☐ [illegible] | | |
| 3. Responsible for personnel management in the Special Investigations Group. | 3. Performance is fully successful when the incumbent utilizes all available resources in the District, Region, and Agency to produce effective personnel management. Personnel management responsibilities for this element, include, but are not limited to, hiring, orientation, explaining benefits, training, establishing performance standards/appraising employee performance, removal actions, appeals, awards, pay and discipline. Measurement will be based upon feedback from Regional and Agency, OASAM and Employee Relations personnel. | Standard was met. Employees in the Special Investigations Group were provided orientation in policy changes whenever necessary. Training was planned for employees in the group and has been presented in one subdistrict. No hiring was done within the group during the appraisal period. Employees were kept advised of their performance on an ongoing basis. Those employees not under the direct supervision of the incumbent were made aware of their performance through their immediate supervisors. No yearly appraisals were due during the rating period. |
| Check One: ☐ [illegible] ☒ [illegible]<br>Check One: ☐ [illegible] ☒ [illegible] ☐ [illegible] | | |
| 4. Responsible for position management in the Special Investigations Group. | 4. Performance is fully successful when the organizational structure of the Special Investigations Group provides effective use of positions. The organization is reviewed to identify deficiencies and excesses and recommend corrections consistent with EMSAH's position management plan. Measurement will be by the completeness and integrity of periodic reviews and/or a year-end status report. | Standard was met. Structure of the Special Investigations Group makes effective use of available positions. Position descriptions are reviewed annually to insure that they are accurate and that positions are necessary. |

| Job Elements/Objectives | Performance Standard | Narrative Performance Appraisal |
|---|---|---|
| (Check One) ☐ Critical ☒ Noncritical<br>(Check One) ☐ Organizational Performance ☒ Managerial Effectiveness ☐ Technical Ability<br>5. Implements affirmative action and equal employment opportunity goals and policies. | 5. Performance is fully successful when the objectives of the District Affirmative Action Plan are reviewed with subordinate staff quarterly, all personnel actions and training opportunities are taken with the intent of meeting the spirit and letter of the AAP, all subordinate supervisors are held accountable for their EEO/AAP responsibilities, and all supervisors will have attended the 16-hour DOE training course for supervisors. | Standard was met. Incumbent is aware of provisions and requirements of the District's Affirmative Action Plan. Subordinate staff is apprised of the goals and policies described in the plan. Personnel actions, training, and awards include consideration of EEO principles. Mandatory EEO training was completed during appraisal period. |
| (Check One) ☐ Critical ☒ Noncritical<br>(Check One) ☐ Organizational Performance ☐ Managerial Effectiveness ☒ Technical Ability<br>6. Communicates technical expertise to subordinates, higher level management and outside sources. | 6. Performance is fully successful when oral and written communications/information is timely, technically accurate, state-of-the-art, clear and concise. Recommendations are logical and tailored to special investigation needs at hand. Measurement will be by personal observation and feedback from other sources inside and outside the agency. | Standard was exceeded. Technical information, both written and oral, was presented in an accurate concise and highly professional manner. Incumbent's presentations reflect most favorably on his own ability and professionalism, which in turn reflects well on the District. |

**7. Other Significant Accomplishments**: Any significant work accomplishments not covered by an element/performance standard under item 6 should be documented below. Extra page(s) may be attached where necessary.

# r'ormance Standards and Appraisal Managers and Supervisors

**U.S. Department of L bor**

ctions Sections 1 through 4 and the first two columns of Section 6 will be completed by the supervisor after rdination with the manager at the beginning of the appraisal period Section 5 and the remainder of Section 6 will completed at the end of the appraisal period

| | |
|---|---|
| **ame of Manager**<br>ICHAEL C. FINNIE | **3. Organizational Location**<br>MSHA, Coal Mine Safety and Health<br>District 8 Office<br>Vincennes, IN |
| **tle and Grade**<br>enior Special Investigator, GM-13 | |

**stablishment of Critical Elements/Noncritical Elements and Performance Standards**

Appraiser Certification After Discussion With the Rated Manager

Signature of Appraiser

Date Aug. 31, 8c

Manager Response

My supervisor has ☒ has not ☐ discussed these standards and critical elements with me
I have ☐ have not ☒ included written comments on these performance standards

Michael D Finnie
Signature of Manager

August 29, 1984
Date

Higher Level Review

☑ These elements and standards have been reviewed and are approved

J. A. Lamonica
Signature of Reviewer

9.7.84
Date

**ppraisal of Performance**

Appraisal Period

From 10/1/84 To 9/30/85

b Type of Appraisal

☑ Scheduled ☐ Unscheduled

Supervisory Appraisal of Performance (Check the definition which describes the manager's *overall performance* during the rating period and sign below

☐ *Outstanding Performance* — Performance exceeds the described level in the performance standards for all critical elements and for 50 percent of the other elements Performance does not fall below the standard for any element of the job

☒ *Highly Effective Performance* — Performance exceeds the described level in the performance standards for 50 percent or more of the critical elements Performance does not fall below the standard for any element of the job

☐ *Fully Successful Performance* — Performance fully meets the described level in the performance standards for all critical elements, and for 50 percent or more of the other elements of the job

☐ *Minimally Satisfactory Performance* — Performance needs to improve in one or more critical elements, and/or needs to improve in more than 50 percent of the noncritical elements of the job

☐ *Unacceptable Performance* — Performance fails to meet the described level in the performance standard for one or more critical elements of the job

Signature of Appraiser

10-2-85
Date

Manager Response

My supervisor has ☒ has not ☐ discussed this appraisal with me I have ☐ have not ☒ included written comments on this appraisal

Michael D. Finnie
Signature of Manager

October 2, 1985
Date

Higher Level Reviewer

☑ I have reviewed and concur with this appraisal

J. A. Lamonica
Signature of Reviewer

10.16.85
Date

DL 1-382B September 1981

**6. Performance Standards and Appraisal** (See the Performance Appraisal Handbook for Supervisors for instructions on developing job elements, performance standards and completing appraisals, or consult your servicing personnel office)

| *Job Element/Objectives* | Performance Standard | Narrative Performance Appraisal |
|---|---|---|
| List the major objectives or responsibilities of the job | For each job element/objective, list one standard, and more if necessary. A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quality and quantity, as appropriate. The methods of measurement should also be included, when practicable. | In completing this section: (1) state whether the manager has met, exceeded, greatly exceeded, needs improvement, or has failed to meet the requirements of the element as measured by the standard; and (2) provide a brief explanation of the basis for the rating. |
| (Check One) ☒ Critical ☐ Noncritical | | |
| (Check One) ☒ Organizational Performance ☐ Managerial Effectiveness ☐ Technical Ability | | |
| 1. Plans and manages the Special Investigations activity in the District. | Performance is satisfactory when all special investigation activity in the District is procedurally correct and in accordance with established guidelines and policies. Final investigative reports issued by the District Special Investigations unit are complete, technically accurate, of sufficient relevant content, and are submitted within established time frames. Clerical duties related to the processing of investigative reports are performed in a uniform manner, and in accordance with established guidelines.<br><br>Quality of performance is measured based on (1) the demonstrated knowledge, performance and capabilities of District Special Investigators and complaint processors; (2) the relevant content, completeness and technical accuracy of the final reports; (3) the integrity of violations submitted to the District Manager for final review; and (4) the completeness and accuracy of the recording and filing system maintained by the Senior Special Investigator. | The standard was exceeded. Special investigation activity within the District is procedurall correct and conforms with established guidelines and policies. The unit processed 21 105(c) discrimination cases, 11 110 civil cases and 75 preliminary inquiries during the rating period. None of the reports of investigations of discrimination or civil cases were returned for additional work or any other insufficiency, which indicates that both investigators and complaint processors have been well trained by the incumbent to perform their duties. Many positive comments have been received from the Headquarters Office of Technical Compliance and Investigations regarding the quality of investigations and reports. Final reports are timely accurate and complete. Incumbent maintains an accurate, up-to-date tracking system for Special Investigations activity in the District. |

Consult your servicing personnel office)

| Job Element/Objectives | Performance Standard | Narrative Performance Appraisal |
|---|---|---|
| List the major objectives or responsibilities of the job | For each job element/objective, list one standard, and more if necessary. A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quality and quantity, as appropriate. The methods of measurement should also be included, when practicable. | In completing this section (1) state whether the manager has met, exceeded, greatly exceeded, needs improvement, or has failed to meet the requirements of the element as measured by the standard, and (2) provide a brief explanation of the basis of the rating. |
| (Check One) ☒ Critical ☐ Noncritical<br>(Check One) ☒ Organizational Performance ☐ Managerial Effectiveness ☐ Technical Ability | | |
| 2. Establish and conduct the Special Assessment Program in the District. | Performance is satisfactory when all possible Special Assessment violations are reviewed and screened for technical correctness and compliance with established criteria. | The standard was met.<br>All Special Assessment violations were reviewed and screened for technical correctness and compliance with established criteria. Violations failing to meet the criteria were returned to the appropriate field office for correctio<br>Training was conducted at both Subdis ict Offices during the rating period to explain the criteria used in determining which violations should be submitted for review. Following this training, uniformity in the violations submitted for review improved considerably. |

consult your servicing personnel office)

| *Job Element/Objectives* | *Performance Standard* | *Narrative Performance Appraisal* |
|---|---|---|
| List the major objectives or responsibilities of the job | For each job element/objective list one standard and more if necessary. A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quality and quantity, as appropriate. The methods of measurement should also be included when practicable. | In completing this section (1) state whether the manager has met, exceeded, greatly exceeded, needs improvement or has failed to meet the requirements of the element as measured by the standard and (2) provide a brief explanation of the basis of the rating. |
| (Check One) ☒ Critical ☐ Noncritical<br>(Check One) ☐ Organizational Performance ☒ Managerial Effectiveness ☐ Technical Ability | | |
| 3. Plan and manage the Special Investigations work. | Manager utilizes all available resources to meet the objectives of the program. Plans are realistic in that variances do not have to be granted without adequate justification. Program is functioning within budgetary constraints, personnel ceilings and agency guidelines. Periodic reviews of the organizational internal controls are made and adjustments made as necessary to ensure that financial and other resources are safeguarded against unauthorized use or disposition. Systematic evaluation of the special investigative activities is ongoing to determine needs/programs. Significant problems are surfaced in time for correction. Prompt, effective actions are taken to correct problems. | The standard was met.<br>Manpower and financial resources were effectively utilized to complete the Special Investigation work of the District. Incumbent completed four 105(c) investigations as well as four preliminary inquiries himself in order to relieve workload and travel restrictions. Incumbent also arranged his own schedule so that he could lend assistance to District 10 by conducting three 105(c) invesitgations. Internal controls are periodically reviewed to ensure that misuse of financial, manpower or equipment resources does not occur. The Special Investigations Program is evaluated on an ongoing basis to determine adequacy of the progr and the need for changes in procedure, additional manpower, equipment, or funds etc. The need for Part 100 training was found during this type of evaluation. The training was effective in solving the problem. |

consult your servicing personnel office)

| Job Element/Objectives | Performance Standard | Narrative Performance Appraisal |
|---|---|---|
| List the major objectives or responsibilities of the job | For each job element/objective, list one standard, and more if necessary. A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quality and quantity, as appropriate. The methods of measurement should also be included, when practicable. | In completing this section (1) state whether the manager has met, exceeded, greatly exceeded, needs improvement or has failed to meet the requirements of the element as measured by the standard, and (2) provide a brief explanation of the basis of the rating. |
| (Check One) ☐ Critical ☒ Noncritical<br>(Check One) ☐ Organizational Performance ☒ Managerial Effectiveness ☐ Technical Ability<br>4. Represents MSHA and District 8 viewpoints in dealing with industry and labor. | Performance is satisfactory when the Senior Special Investigator promotes MSHA and District 8 objectives in a manner that clearly reflects established agency policy. District and MSHA commitments and obligations are met within agreed upon timeframes. Representational activities will be measured by feedback from industry and labor and by a year-end accomplishment report including the method by which policy matters were set forth. | The standard was met.<br>Incumbent's contacts with management, labor, attorneys in private practice, Solicitor's Office, Department of Justice, etc., promote MSHA and District 8 viewpoints in a professional manner, consistent with agency policy. Feedback from outside contacts has been positive. |

consult your servicing personnel office)

| Job Element/Objectives | Performance Standard | Narrative Performance Appraisal |
|---|---|---|
| List the major objectives or responsibilities of the job | For each job element/objective, list one standard, and more if necessary. A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quality and quantity, as appropriate. The methods of measurement should also be included, when practicable. | In completing this section, (1) state whether the manager has met, exceeded, greatly exceeded, needs improvement, or has failed to meet the requirements of the element, as measured by the standard, and (2) provide a brief explanation of the basis of the rating. |
| (Check One) ☒ Critical ☐ Noncritical<br>(Check One) ☐ Organizational Performance ☒ Managerial Effectiveness ☐ Technical Ability | | |
| 5. Responsible for personnel management in the Special Investigations Group. | Performance is satisfactory when the incumbent utilizes all available resources in the District, Region, and Agency to produce effective personnel management. Personnel management responsibilities for this element, include, but are not limited to, hiring, orientating, explaining benefits, training, establishing performance standard/appraising employee performance, removal actions, appeals, awards, pay and discipline. Measurement will be based upon feedback from Regional and Agency, OASAM and Employee Relations personnel. | The standard was exceeded.<br>Although incumbent directly supervises only one subordinate employee, other personnel are at his disposal to complete Special Investigations work. Mr. Finnie was instrumental in changing performance standards for those investigators not under his immediate supervision so that they reflect performance of Special Investigations duties. He now provides input to the appropriate supervisor regarding the performance of these investigators so that all their performance is considered when determining an overall rating. Incumbent also makes a special effort to recognize the work done for his unit by persons not under his immediate supervision.<br>Personnel management duties such as appraisal of performance, training, discipline, etc., in regard to his subordinate employee are performed in accordance with Departmental, Agency, and District guidelines and policies. |

(Consult your servicing personnel office)

| Job Element/Objective | Performance Standard | Narrative Performance Appraisal |
|---|---|---|
| List the major objectives or responsibilities of the job | For each job element/objective, list one standard, and more if necessary. A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quality and quantity, as appropriate. The methods of measurement should also be included, when practicable. | In completing this section: (1) State whether the manager has met, exceeded, greatly exceeded, needs improvement, or has failed to meet the requirements of the element as measured by the standard; and (2) provide a brief explanation of the basis of the rating. |
| (Check One) ☐ Critical ☒ Noncritical | | |
| (Check One) ☐ Organizational Performance ☒ Managerial Effectiveness ☐ Technical Ability | | |
| 6. Responsible for position management in the Special Investigations Group. | Performance is satisfactory when the organizational structure of the Special Investigations Group provides effective use of positions. The organization is reviewed to identify deficiencies and excesses and recommend corrections consistent with CMS&H's position management plan. Measurement will be by the completeness and integrity of periodic reviews and/or a year-end status report. | The standard was met.<br>The Special Investigations Group uses its assigned positions for maximum effectiveness. Because there are only two position assigned to the group (Sr. Special Investigator and one investigator), Mr. Finnie relies heavily on the assistance of employees not under his immediate supervision to complete a large portion of the Group's work.<br>He ensures that these people do not spend more than the amount of time necessary to conduct complete, comprehensive investigations, thereby releasing them to their supervisors for other assigned duties. |

**8. Performance Standards and Appraisal** (See the Performance Appraisal Handbook for Supervisors for instructions on developing job elements, performance standards and completing appraisals or consult your servicing personnel office)

| *Job Element/Objectives* | *Performance Standard* | *Narrative Performance Appraisal* |
|---|---|---|
| List the major objectives or responsibilities of the job | For each job element/objective, list one standard, and more if necessary. A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quality and quantity, as appropriate. The methods of measurement should also be included, when practicable | In completing this section, (1) state whether the manager has met, exceeded, greatly exceeded, needs improvement, or has failed to meet the requirements of the element, as measured by the standard, and (2) provide a brief explanation of the basis of the rating |
| (Check One) ☐ Critical ☒ Noncritical<br>(Check One) ☐ Organizational Performance ☒ Managerial Effectiveness ☐ Technical Ability<br>7. Implements affirmative action and equal employment opportunity goals and policies. | Performance is satisfactory when the objectives of the District Affirmative Action Plan are reviewed with subordinate staff quarterly, all personnel actions and training opportunities are taken with the intent of meeting the spirit and letter of the AAP, and all subordinates are held accountable for their EEO/AAP responsibilities. | The standard was met.<br>The Affirmative Action Plan is discussed with the employee quarterly. All personnel actions and training approvals are made in conformance with Affirmative Action principles. |

consult your servicing personnel office)

| *Job Element/Objectives* | *Performance Standard* | *Narrative Performance Appraisal* |
|---|---|---|
| List the major objectives or responsibilities of the job | For each job element/objective, list one standard, and more if necessary. A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quality and quantity, as appropriate. The methods of measurement should also be included, when practicable. | In completing this section, (1) state whether the manager has met, exceeded, greatly exceeded, needs improvement, or has failed to meet the requirements of the element, as measured by the standard; and (2) provide a brief explanation of the basis of the rating. |
| (Check One) ☐ Critical ☒ Noncritical<br>(Check One) ☐ Organizational Performance ☐ Managerial Effectiveness ☒ Technical Ability | | |
| 8. Communicates technical expertise to subordinates, higher level management and outside sources/ | Performance is satisfactory when oral and written communications/information is timely, technically accurate, state-of-the-art, clear and concise. Recommendations are logical and tailored to special investigation needs at hand. Measurement will be by personal observation and feedback from other sources inside and outside the agency. | The standard was met.<br>Incumbent's oral and written communications are accurate, timely, clear and concise. Recommendations made are appropriate for the issue under consideration. Both personal observation and feedback from other sources indicate that Mr. Finnie makes a very conscientious effort in this area. |

**6. Performance Standards and Appraisal** (See the Performance Appraisal Handbook for Supervisors for instructions on developing job elements, performance standards and completing appraisals, or consult your servicing personnel office)

| *Job Element/Objectives* | *Performance Standard* | *Narrative Performance Appraisal* |
|---|---|---|
| List the major objectives or responsibilities of the job. | For each job element/objective, list one standard, and more if necessary. A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quality and quantity, as appropriate. The methods of measurement should also be included, when practicable. | In completing this section: (1) state whether the manager h met, exceeded, greatly exceeded, needs improvement, or h failed to meet the requirements of the element as measured the standard, and (2) provide a brief explanation of the basis the rating. |
| (Check One) Critical X Noncritical<br>(Check One) ☐ Organizational Performance ☒ Managerial Effectiveness ☐ Technical Ability<br>9. Safety and health of employees. | Performance is satisfactory when the incumbent has taken positive steps to assure that every employee has received orientation, guidance, and training necessary to safely perform their job. Subordinate managers are advised of safety and health responsibility and held accountable at the time of performance appraisal. Performance is measured by the incident rates; periodic reviews of safety and health functions within the organization; and a record of inspections conducted. | The standard was met.<br>Employee is kept advised of curren information regarding the safe performance of his duties. No injuries were reported during the appraisal period. |

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**7. Other Significant Accomplishments:** Any significant work accomplishments not covered by an element/performance standard under item 6 should be documented below. Extra page(s) may be attached where necessary.

Eagle No. 2 Investigation:

Assisted U.S. Attorney's Office by serving Grand Jury subpoenas, preparing witnesses, gathered additional witness statements, and served as MSHA's representative in determining the course of action to be taken by the U.S. Attorney's Office in the case.

Provided a deposition and assisted the attorney in preparation of a case to be reviewed by the Commission. Mr. Finnie had conducted the original investigation of this case while assigned to the Pikeville Office.

Performance Standards and Appraisal
for Employees in Positions in the
NCFLL Bargaining Unit

**U.S. Department of Labor**

Instructions: Sections 1 through 4 and the first two columns of Section 6 will be completed by the supervisor after coordination with the employee, at the beginning of the appraisal period. Section 5 and the remainder of Section 6 will be completed at the end of the appraisal period.

**1. Name of Employee**
Michael G. Finnie

**2. Title and Grade**
Senior Special Investigator
GM-1822-13

**3. Organizational Location**
Mine Safety & Health Administration
Coal Mine Safety & Health
District 8
Vincennes, Indiana

**4. Establishment of Critical Elements/Noncritical Elements and Performance Standards**

a. Appraiser Certification After Discussion With the Employee

Signature of Appraiser 2-25-86 Date

b. Employee Response

My supervisor has ☑, has not ☐ discussed these standards and critical elements with me.

I have ☐, have not ☑ included written comments on these performance standards.

Signature of Employee 3-31-86 Date

c. Higher Level Review

☑ These elements and standards have been reviewed and are approved.

J A Lamonica 4-9-86
Signature of Reviewer Date

**5. Appraisal of Performance**

a. Appraisal Period

From 4/9/86 To 9/15/86

b. Type of Appraisal

☒ Scheduled ☐ Unscheduled

c. Supervisory Appraisal of Performance (Check the definition which describes the employee's overall performance during the rating period and sign below.)

☐ *Outstanding Performance* — Where performance exceeds the described level in the performance standards for all critical elements, and for 50 percent of the other elements. Performance does not fall below the standard for any element of the job.

☐ *Highly Effective Performance* — Where performance exceeds the described level in the performance standard for 50 percent or more of the critical elements. Performance does not fall below the standard for any element of the job.

☒ *Satisfactory Performance* — Where performance meets the described level in the performance standards for all critical elements.

☐ *Minimally Satisfactory Performance* — Where performance in one or more critical elements is slightly below standard.

☐ *Unacceptable Performance* — Where performance fails to meet the described level in the performance standard for one or more critical elements of the job.

Signature of the Appraiser 9-17-86 Date

d. Employee Response

My supervisor has ☑, has not ☐, discussed this appraisal with me. I have ☐, have not ☑ included written comments on this appraisal.

Signature of Employee 9-17-86 Date

e. Higher Level Reviewer

☑ I have reviewed and concur with this appraisal.

Signature of the Reviewer 10-27-86 Date

Received SEP 22 [illegible]
CMS&H Admin[illegible]

**This appraisal is grievable under the DOL/NCFLL agreement.**

4/3/86 [illegible]

DL 1-291 (Revised June 1981)

**6. Performance Standards and Appraisal**

(See DLS Appendix B to FPM 430 for instructions on developing job elements, performance standards and making appraisals.)

| *Job Element/Objectives*<br>List the major objectives or responsibilities of the job | *Performance Standard*<br>For each job element/objective, list one standard and more if necessary. A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quality and quantity, as appropriate. The methods of measurement should also be included when practicable. | *Narrative Performance Appraisal*<br>In completing this section, (1) state whether the employee has met, exceeded, greatly exceeded, needs improvement or failed to meet the requirements of the element, as measured by the standard, and (2) provide a brief explanation of the basis of the rating. |
|---|---|---|
| Critical ☒<br>Noncritical ☐<br>(Check One)<br>1. Coordinates the Special Investigations activity in the District. | Performance is satisfactory when all special investigation activity in the District is procedurally correct and in accordance with established guidelines and policies. Final investigative reports issued by the District Special Investigations unit are complete, technically accurate, of sufficient relevant content, and are submitted within established time frames. Clerical duties related to the processing of | The standard was met.<br>The District 8 Special Investigations unit processed 34 preliminary inquiries, 4 105(c) cases and one 110 case during the rating period. None of the reports was returned for additional work or for any other insufficiency. Many positive comments were received from the Office of Tech. Compliance regarding the quality of the reports. Investigations were completed with established time frames, and reports containe |
| Critical ☐<br>Noncritical ☐<br>(Check One) | investigative reports are performed in a uniform manner, and in accordance with established guidelines.<br>Quality of performance is measured based on the demonstrated knowledge of District Special Investigators and complaint processors and the relevant content, completeness and technical accuracy of the final reports. | sufficient information to allow proper recommendations to be made regarding disposition of the cases. Investigations were conducted in a professional manner. Comments from the Office of Technical Compliance have been highly complimentary of the program. Individual civil penalties under Section 110( were assessed against three agents of a corporation and one action under Section 110( was brought to conclusion. |
| Critical ☒<br>Noncritical ☐<br>(Check One)<br>2. Establish and conduct the Special Assessment Program in the District | Performance is satisfactory when all possible Special Assessment violations are reviewed and screened for technical correctness and compliance with established criteria. Quality of performance will be determined by the integrity of violations submitted to the District Manager for final review and the completeness and accuracy of the recording and filing system maintained by the Senior Special Investigator to track the | The standard was met.<br>None of the 168 violations processed for Special Assessments in District 8 were returned as a result of omission or error. The screening process employed by the incumbent to ensure the correctness of violations issued and their compliance with established criteria was very successful during the rating period. Incumbent provides guidance to the field offices to follow up on problems found during review of these violations. |
| Critical ☐ | Special Assessments Program. | |

(Check One)

| | | |
|---|---|---|
| 3. Representational Activities and Communications. | Performance is satisfactory when the employee's representation of the Agency and the District through oral and written communication furthers MSHA's objectives and clearly reflects the policies, priorities, and viewpoints of the Agency, Coal Mine Safety and Health, and District 8. Communications are accurate, timely, clear and concise. Recommendations are logical and relevant to the situation under consideration. Communications are coordinated with other levels of the District to ensure a consistent approach to common circumstances within the District. | The standard was met. Contacts made with the mining community, within MSHA, the Solicitors Office, the Department of Justice and others promoted MSHA's and District 8's goals and objectives in a positive, clear and professional manner. Incumbent participated in JITC classes by presenting classes on Sections 101(c), 103(f 104(d), 105(c), 108(a), 110(c), (d) and 111 of the Act. Legal decisions impacting on the Agency and the District are reviewed, synopsised and submitted to the District Manager for distribution to enforcement personnel. |
| Critical ☐<br>Noncritical ☐<br>(Check One) | | |
| Critical ☐<br>Noncritical ☐<br>(Check One) | | |

Performance Standards and Appraisal
for Employees in Positions in the
NCFLL Bargaining Unit

**U.S. Department of Labor**

Instructions: Sections 1 through 4 and the first two columns of Section 5 will be completed by the supervisor after coordination with the employee at the beginning of the appraisal period. Section 5 and the remainder of Section 5 will be completed at the end of the appraisal period.

**1. Name of Employee**
MICHAEL G. FINNIE

**2. Title and Grade**
Senior Special Investigator, GS-13

**3. Organizational Location**
MSHA, Coal Mine Safety and Health
District 8 Office
Vincennes, IN

**4. Establishment of Critical Elements/Noncritical Elements and Performance Standards**

a. Appraiser Certification After Discussion With the Employee

Maurice S. Childers 3-3-83
Signature of Appraiser Date

b. Employee Response

My supervisor has ☒ has not ☐ discussed these standards and critical elements with me.

I have ☐ have not ☒ included written comments on these performance standards.

Michael G. Finnie 3-4-83
Signature of Employee Date

c. Higher Level Review

☑ These elements and standards have been reviewed and are approved.

J A Lamonica 3-14-83
Signature of Reviewer Date

**5. Appraisal of Performance**

a. Appraisal Period

From 3/14/83 – 11/28/83

b. Type of Appraisal

☒ Scheduled ☐ Unscheduled

c. Supervisory Appraisal of Performance: Check the definition which describes the employee's overall performance during the above period and sign below.

☐ Outstanding Performance — Where performance exceeds the described level in the performance standards for all critical elements and for the majority of the noncritical elements. Performance does not fall below the standard for any element of the job.

☒ Highly Effective Performance — Where performance exceeds the described level in the performance standard for 50 percent or more of the critical elements. Performance does not fall below the standard for any element of the job.

☐ Satisfactory Performance — Where performance meets the described level in the performance standards for all critical elements.

☐ Minimally Satisfactory Performance — Where performance in one or more critical elements is slightly below standard.

☐ Unacceptable Performance — Where performance fails to meet the described level in the performance standard for one or more critical elements of the job.

Maurice S. Childers
Maurice S. Childers 11/29/83
Signature of the Appraiser Date

d. Employee Response

My supervisor has ☒ has not ☐ discussed this appraisal with me. I have ☐ have not ☒ included written comments on this appraisal.

Michael G. Finnie 12-6-83
Signature of Employee Date

e. Higher Level Reviewer

☐ I have reviewed and concur with this appraisal.

Signature of the Reviewer Date

**This appraisal is grievable under the DOL NCFLL agreement.**

DL 1-181 (Revised June 1981)

**6. Performance Standards and Appraisal**

(See DLS Appendix B to FPM 430 for instructions on developing job elements, performance standards and making appraisals.)

| *Job Element/Objectives*<br>List the major objectives or responsibilities of the job | *Peformance Standard*<br>For each job element/objective list one standard and more if necessary. A standard should include the results expected when performed at a satisfactory level in terms of timeliness, quality and quantity, as appropriate. The methods of measurement should also be included when practicable. | *Narrative Performance Appraisal*<br>In completing this section: (1) state whether the employee has met, exceeded, greatly exceeded, needs improvement or failed to meet the requirements of the element as measured by the standard and (2) provide a brief explanation of the baisis of the rating. |
|---|---|---|
| Critical ☒<br>Noncritical ☐<br>(Check One)<br>1. Assigns, coordinates, or conducts all special investigation activities in the District, subject to the policies implemented by the District Manager, in reference to Sections 105(c), 108(a), and 110 of the Federal Mine Safety and Health Act of 1977. | 1. Meeting the standard is ensuring that all special investigation activity in the District is procedurally correct and in accordance with the Act, the special investigations manual, and the policies implemented by the District Manager. Quality is measured based on demonstrated knowledge, performance, and capability of all District special investigators regarding special investigation activity. | 1. Exceeded the standard. Ratee assumed the duties in December 1982 with a 6-month backlog caused by the untimely death of the previous Senior Special Investigator. Ratee, in less than 3 months, caught up the backlogged areas, streamlined some of the processes, retrained the special investigators and is administering a top-notch Special Investigation Program in a much shorter time frame than was expected. |
| Critical ☒<br>Noncritical ☐<br>(Check One)<br>2. Reviews all special investigation reports submitted by the District special investigations unit for completeness, technical accuracy, content, and timeliness as set forth in the Coal Mine Safety and Health Act of 1977 and the special investigations manual. | 2. Meeting the standard is ensuring that all special investigation reports are complete, technically accurate, are of sufficient relevant content, and have been submitted to the District within the timelines set forth in the Act and the special investigations manual before these reports are submitted to the District Manager for review. Quality is measured through the relevant content, completeness, and technical accuracy of these reports as established by the Act and the special investigations manual. | 2. Met the standard by completing quality reviews of all the special investigation reports. |
| Critical ☐<br>Noncritical ☒<br>(Check One)<br>3. Monitor all complaint processing activity within the District to ensure that these activities are executed in accordance with the Act, the special investigations manual, and the policies implemented by the District Manager. | 3. Meeting the standard is ensuring that all complaint processing duties within the District are complete, technically accurate, uniformly implemented, and in accordance with the Act and special investigations manual by a continuing systematic review of complaint processing | 3. Met the standard by establishing and controlling the complaint processing activity in the District. |

| | | |
|---|---|---|
| Critical ☐<br>Noncritical ☐<br>(Check One) | District complaint processors are kept abreast of policy changes and relevant procedures, and staying alert to potential problems within the system. Quality is measured based on demonstrated knowledge, performance, and capability of all District complaint processors regarding complaint processing duties. | |
| Critical ☐<br>Noncritical ☒<br>(Check One)<br>4. Review and screen all possible Special Assessment and possible Willful violations for technical accuracy and adherence to established relevant criteria before submitting the appropriate violations to the District Manager for a final determination regarding these violations. | 4. Meeting the standard is ensuring that all candidate possible Willful and Special Assessment violations submitted to the District Manager for final determination are technically accurate and in accordance with established relevant criteria. Quality is measured through the integrity of those violations that are submitted by the Senior Special Investigator to the District Manager for Special Assessment and Possible Willful action and in the completeness and accuracy of the recording and filing system maintained by the Senior Special Investigator regarding these violations. | 4. Met the standard by constant quality review and screening of all possible Special Assessment and possible Willful violations in the District. |
| Critical ☐<br>Noncritical ☐<br>(Check One) | | |

Mr. FINNIE. Yes, sir.

The CHAIRMAN. Two months after he had recommended you for the Award for Recognition of Excellence; is that right?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. And what rating did you receive?

Mr. FINNIE. "Satisfactory."

The CHAIRMAN. Did Mr. Spicer approve the evaluation?

Mr. FINNIE. Yes, sir, he did.

The CHAIRMAN. And did the evaluation make reference to the indictment and conviction of the Peabody Company?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. Did you ask your District Manager why there was a sudden change in your evaluation?

Mr. FINNIE. Yes, sir, I did.

The CHAIRMAN. And what did he say?

Mr. FINNIE. He explained that across the agency, they were going to take a more conservative view toward performance evaluations. And I told him I understood that and asked him specifically why more credit was not given for the Peabody investigations and for the other investigations that we had conducted there in the district.

Mr. Childers told me that—well, his words were, "You know how Zegeer feels about this."

The CHAIRMAN. Do you know how Mr. Zegeer feels about this?

Mr. FINNIE. Not firsthand. I have only met Mr. Zegeer once, and it was on another matter. But my understanding is that he was very disapproving of the Peabody convictions.

The CHAIRMAN. Did you receive merit pay raises for the past several years?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. Did you receive one this past year?

Mr. FINNIE. Well, there is a distinction there. For each year that I was rated "highly effective" there was a bonus, which kind of goes along with these higher evaluations; and this year, since I was rated only "satisfactory", I received only the standard step raise.

The CHAIRMAN. Did you find that after the Peabody Company pleaded guilty to allowing miners to work under unsupported roofs, that the same mine was again committing the same violation?

Mr. FINNIE. Yes, sir.

The CHAIRMAN. And was action again initiated against the company?

Mr. FINNIE. Yes, sir, it was.

The CHAIRMAN. Why was this action civil instead of criminal?

Mr. FINNIE. The agency does not make that distinction, sir. My understanding is that we make recommendations to the Department of Justice, and the Department of Justice determines whether or not they will accept the case.

But my understanding is that it does meet the criteria—it could possibly meet the criteria for a criminal case as opposed to just a civil case.

The CHAIRMAN. Do you know what the status of the case is?

Mr. FINNIE. It is still under investigation, sir.

The CHAIRMAN. Do you think that the investigations of fatal mine accidents and criminal investigations should be part of a separate entity outside the agency?

Mr. FINNIE. I am aware that there have been a lot of problems in the past, and I am probably not the best person to ask whether or not that is what we should do, but it would indicate to me that we should look into other possibilities.

The CHAIRMAN. Thank you.

We have got questions for Mr. Goode, Allen Howell, Dewey Rife and Dorsey Owens.

Mr. Goode, what is your present position?

Mr. GOODE. I am a mine safety and health specialist for the Office of Technical Compliance and Investigation in Arlington, Virginia.

The CHAIRMAN. How long have you been in that position?

Mr. GOODE. Since August the 6th, 1985.

The CHAIRMAN. Do you have a family?

Mr. GOODE. Yes, sir.

The CHAIRMAN. You have a large one, I understand.

Mr. GOODE. Yes, sir, nine children.

The CHAIRMAN. I am familiar with large families.

How long have you been with the agency?

Mr. GOODE. Since January the 14th, 1971.

The CHAIRMAN. I understand that prior to your transfer to agency headquarters in 1985, you were the Senior Special Investigator in the District 5 Office in Norton, Virginia; is that correct?

Mr. GOODE. Yes, sir, I was.

The CHAIRMAN. And did Mr. Howell and Mr. Rife and Mr. Owens, who are seated there with you, work with you as a Special Investigator in District 5?

Mr. GOODE. Yes, sir.

The CHAIRMAN. And how many criminal investigations that you and these other men conducted resulted in criminal charges?

Mr. GOODE. Twenty-four.

The CHAIRMAN. How many of these charges resulted in convictions?

Mr. GOODE. Twenty-four.

The CHAIRMAN. So you had 24 criminal charges and 24 convictions. That is quite a remarkable record, is it not?

Mr. GOODE. Yes, I think so, sir.

The CHAIRMAN. I will put in the record the list of those cases.

[The list referred to follows:]

## INDEX

## SUMMARY OF CRIMINAL PROCEEDINGS

| OTC&I No. | MSHA No. | COMPANY AND/OR AGENTS | Date Proscuted |
|---|---|---|---|
| 1 | CW-77-1 | ELRO Coal Corporation, et.aL. | 7-17-79 |
| 2 | CW-77-146 | Big Ben Coal Company, Inc., and Gail Rowland | 8-29-79 |
| 3 | CW-77-145 | P&P Coal Company, Inc. | 10-31-79 |
| 4 | NORT-CEM-80-1 | Commonwealth Bolt Company, Inc. | 11-13-79 |
| 5 | CW-78-50 | Douglas Vandyke Coal Company and Douglas R. Vandyke | 12-17-79 |
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OTC&I No. 1

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Elro Coal Corporation
and
Jerry Ritchie
and
William D. White
and
Larry G. Sturgill

Western District of Virginia
Cr. No. 79-0059, April 11, 1979
MSHA No. CW-77-173

### Reason for Investigation:

A 103(g) inspection was requested by the representative of the miners. This inspection revealed numerous violations of extreme heavy accumulations of coal dust and float coal dust, a total lack of ventilation controls to direct a ventilating current to the working section, and the failure to maintain a sufficient amount of oxygen in the working places. After a review of the violations was completed, the District Manager ordered the initiation of a special investigation.

### Charges:

The investigation resulted in a 25 count indictment being handed down by a Federal Grand Jury against the corporation and 3 of its agents, covering falsification of mine examination record books, insufficient air, float dust and loose coal accumulations, in violation of Sections: 863(b), 863(c), 863(d), 863(e) and 864(a), Title 30, U.S.C. All in violation of Sections 819(b) and 819(d), Title 30, U.S.C.

### Disposition of Case:

On July 17, 1979, the corporation pleaded guilty to 2 counts of violating 30 U.S.C. 819(b) (willful violations or refusal to comply with health and safety standards by operators of mines). On Count 1, a fine of $10,000 was levied to be paid over 1 year with $5,000 suspended. On Count 2, the sentence was suspended and the corporation was placed on probation for 1 year.

Mr. Ritchie pleaded guilty to 2 counts for violations of 30 U.S.C. 819(d) (false statements or representations). On the first count, he was fined $1,000 to be paid over 1 year with $500 suspended and was placed on probation for 1 year on the second count.

Mr. White pleaded guilty to 1 count of violating 30 U.S.C. 819(d) (false statements or representations) and was placed on probation for 1 year.

Mr. Sturgill pleaded guilty to 2 counts of violating 30 U.S.C. 819(d) (false statements or representations). On the first count, he was fined $1,000 to be paid over 1 year and was placed on probation for 1 year on the second count.

OTC&I No. 2

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Big Ben Coal Company, Inc.
and
Gail D. Rowland

Southern District of Iowa
Cr. No. 79-111, August 16, 1979
MSHA No. CW-77-146

### Reason for Investigation:

On August 9, 1977, a shuttle-car operator was fatally injured while operating a shuttle car without a protective cab or canopy installed. The victim's head was caught between a half-header (roof support), supporting power cables, and the steering wheel of his shuttle car. The fatal investigation revealed that the shuttle car could have been operated with the required cab or canopy in the current mining height of 48 inches. Preliminary information obtained during the fatal accident investigation revealed that the cab was removed from the shuttle car by mine management, in violation of mandatory standard Section 75.1710-1(a)(3), 30 CFR. A special investigation was initiated to determine if the standard was willfully and/or knowingly violated.

### Charges:

The investigation revealed that the corporation willfully failed to equip the Joy 9SC shuttle car with a cab or canopy, in violation of Section 75.1710-1(a)(3), Title 30, Code of Federal Regulations and that Gail D. Rowland, officer and agent of the corporation knowingly authorized, ordered and carried out the violation. All in violation of Section 819(b) (willful violations or refusal to comply with health or safety standards by operators of mines) and Section 819(c), (willful violations or refusal to comply with health or safety standards by directors, officers, or agents of corporations), Title 30, United States Code.

### Disposition of Case:

On August 29, 1979, the defendants pleaded "nolo contendere". On both counts, the imposition of sentence was suspended and the defendants were placed on unsupervised probation for 1 year upon the following conditions: (1) Comply with all local, state and Federal law; and, (2) Make restitution to the minor child of the accident victim in the amount of $2,500.

OTC&I No. 3

## SUMMARY OF CRIMINAL PROCEEDING

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
P & P Coal Company, Inc.

Western District of Virginia
MSHA Case No. CW-77-145

### Reason for Investigation:

This case resulted from an MSHA investigation into a methane gas explosion at the P & P Coal Company, St. Charles, Virginia, which caused 4 fatalities, on July 7, 1977.

### Charges:

The investigation revealed that the corporation willfully violated 30 U.S.C. Section 863(b) (failure to ventilate active workings of the mine) and 30 U.S.C. Section 863(o) (failure to follow methane and dust control plan). All in violation of 30 U.S.C. Section 819(b) (willful violations or refusal to comply with health or safety standards by operators of mines).

### Disposition of Case:

On October 31, 1979, the corporation waived indictment and pleaded "nolo contendere". It was fined $10,000 and placed on probation for 3 years.

OTC&I No. 4

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Commonwealth Bolt Company, Inc.

Western District of Virginia
MSHA No. NORT-CEM-80-1

### Reason for Investigation:

On September 24, 1979, two Federal Coal Mine Inspectors found a large supply of roof bolts manufactured and delivered to a coal mine by Commonwealth Bolt Company, Inc. The roof-bolt heads were stamped 36"; however, the actual length of the bolts was only 12". The inspectors provided 2 of the bolts to the special investigations unit in District 5.

### Charges:

The company was charged with violating Section 110(h) of the Federal Mine Safety and Health Act of 1977, which states that: "Whoever knowingly distributes, sells, offers for sale, introduces, or delivers in commerce any equipment for use in a coal or other mine, including, but not limited to, components and accessories of such equipment, which is represented as complying with the provisions of this Act, or with any specification or regulation of the Secretary applicable to such equipment, and which does not so comply, shall, upon conviction, be subject to the same fine and imprisonment that may be imposed upon a person under subsection (f) of this section." Upon conviction, a fine of not more than $10,000, or imprisonment for not more than 5 years, or both may be imposed.

### Disposition of Case:

On November 13, 1979, the corporation waived indictment and pleaded guilty to 2 felony counts. It was fined $10,000 and placed on 1 year probation, with $5,000 of the fine suspended if the corporation assisted the Government in any investigation resulting from the shipments of unlawful bolts and completed the probationary period.

### Follow Up:

In West Virginia and Virginia, an additional 17,000 illegal roof bolts were recovered from coal mines and destroyed.

OTC&I No. 5

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Douglas Vandyke Coal Company
and
Douglas R. Vandyke

Western District of Virginia
Cr. No. 79-00109, October 7, 1979
MSHA No. CW-78-50

### Reason for Investigation:

On September 21, 1978, a fatal roof fall accident occurred at the No. 2 Mine, of the Douglas Vandyke Coal Company. The accident investigation revealed violations of the approved roof-control plan, namely: failing to provide adequate roof supports to the haulage ways and working places; mining of a pillar block; transporting coal through mined out areas of the mine; failing to maintain an adequate supply of roof supports at the mine; and failing to test the roof before mining, in violation of Title 30, U.S.C. Sections 862(a), 862(b), 862(c) and 862(f). A violation of failing to conduct proper preshift examinations of the mine and falsifying the preshift books to indicate otherwise was also present, in violation of Title 30, U.S.C. Section 819(d).

### Charges:

A 7 count indictment against Douglas Vandyke Coal Company was handed down for violations of Title 30, U.S.C. Section 819(b) (willful violations or refusal to comply with health and safety standards by operators of mines); Title 30, U.S.C. Section 819(c) (willful violations or refusal to comply with health or safety standards by directors, officers, or agents of corporations); and Title 30, U.S.C. Section 819(d) (falsifying records).

### Disposition of Case:

On December 17, 1979, trial was held in the U.S. District Court, Western District of Virginia, at which time 2 counts were dismissed (failure of corporation and agent to provide ample supply of roof supports at mine) and a not guilty verdict was returned on 1 count (falsifying mine records). The company was found guilty on 2 counts: (1) Violating roof control plan, Section 862(a); and, (2) Failure to follow a method of mining to prevent exposure of miners to unusual dangers through faulty pillar recovery methods, Section 862(b). All in violation of 30 U.S.C. Section 819(b).

Douglas R. Vandyke was found guilty on 3 counts: Knowingly authorizing, ordering and carrying out the corporation's willful violation of 30 U.S.C. Sections 862(a) and 862(b); and, failing to adequately test the roof prior to mining, in violation of Section 862(f), 30 U.S.C. All in violation of 30 U.S.C. Section 819(c).

The company was fined a total of $25,000. Mr. Vandyke was fined $10,000 and placed on active probation for 1 year.

OTC&I No. 6

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Douglas E. Shelton

Western District of Virginia
MSHA No. CFR-79-01

### Reason for Investigation:

Miners, employed at the Elkins Energy Coal Corporation's No. 2 Mine, filed a complaint, with the District Manager, that there were no dust surveys conducted on their work environments. A review of MSHA's records, indicated that dust surveys were being submitted and a special investigation was ordered to be initiated by the District Manager.

### Charges:

The investigation revealed that Douglas E. Shelton, Mine Superintendent, was operating the respirable dust pumps inside the mine office. Shelton then submitted dust sample cassettes and mine data cards to MSHA, knowing that the cassettes had not been on the miners, and that the mine data cards were mailed with forged signatures of the miners. No evidence was found to indicate that the corporation had knowledge of these acts or possessed willful intent to violate mining laws.

### Disposition of Case:

On January 24, 1980, Mr. Shelton waived indictment and pleaded guilty to 3 counts of violating Title 30, U.S.C. Section 819(d) (falsifying records). He received a $2,000 fine and was placed on active probation for 1 year.

OTC&I No. 7

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
J & P Coal Company
and
Tolbert Prater
and
Franklin Justice

Western District of Virginia
Cr. No. 80-0060, May 14, 1980
MSHA No. CW-79-70

### Reason for Investigation:

Numerous violations were found to exist during an inspection of the mine during late July and early August 1979. Appropriate citations were issued, covering safety violations involving: lack of a sufficient ventilating current of air at the working places in the mine; no safety posts or jacks provided during roof-bolting operations; no torque wrench and roof bolter deenergization device provided; entries and crosscuts on the working section exceeding the required limit of 20 feet; several areas of the mine roof with dislodged roof bolts with some areas not re-roof bolted; and cutting over drilled holes charged with explosives with a cutting machine.

After reviewing the violations, the District Manager ordered a special investigation be conducted.

### Charges:

The investigation resulted in a 25 count indictment being handed down against the corporation and two agents for willful violations of Title 30, U.S.C., Sections: 862(a) (roof control violations); 863(b) (ventilation violations); 865(r) (electrical equipment violations); and 873(c) (blasting and explosives violations). All in violation of Title 30, U.S.C., Sections 819(b) (willful violations or refusal to comply with health or safety standards by mine operators), 819(c) (willful violations or refusal to comply with health or safety standards by directors, officers, and/or agents of corporations). Two violations of Title 30, U.S.C. Section 819(d) were also incorporated within the indictment against the corporate agents for falsifying the mine examination record book.

Disposition of Case:

On September 8, 1980, the corporation was fined $25,000 and placed on 5 years probation for 5 misdemeanor violations of 30 U.S.C., Sections 852(a), 863(b), 865(r) and 873(c). Tolbert Prater, President, and Franklin Justice, Vice President of J & P Coal Company, pleaded guilty to charges of falsifying the mine record books in an agreement negotiated with Federal prosecutors. Mr. Prater was placed on 18 months probation and fined $5,000, with all but $1,000 suspended. Mr. Justice was placed on 3 years probation with a $5,000 fine suspended on successful completion of the probationary period.

OTC&I No. 8

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Westmoreland Coal Company
and
Paul S. Kade

Southern District of West Virginia
Cr. No. 80-50012, Superseding, September 23, 1980
MSHA No. CFR-79-03

### Reason for Investigation:

Three former employees and one employee of Westmoreland Coal Company, Winding Gulf Division, filed a complaint with MSHA, charging that the corporation's environmental inspector was falsifying respirable dust samples for the corporation's mines within the Winding Gulf Division.

### Charges:

The investigation revealed that Paul S. Kade, corporate environmental inspector, was destroying accurate respirable dust samples taken in the corporation's underground mines and substituting false respirable dust samples created above ground in Mr. Kade's office. A 20 count indictment involving violations of Title 18, U.S.C., Sections: 1341 (mail fraud and swindles); 1342 (fictitious name or address in mail fraud); and Section 2, (aiding and abeting); Title 30, U.S.C. Section 819(c) (willful violations or refusal to comply with health or safety standards by corporations, and/or its directors, officers, or agents); and Title 30, U.S.C. Section 819(d) (false statements and representations).

### Disposition of Case:

On October 16, 1980, in a plea agreement, the company pleaded guilty to 1 felony, 18 U.S.C. 1341, and 4 misdeameanors; 30 U.S.C. 819(c) and was fined $40,000. Mr. Kade pleaded guilty to 1 felony, Title 30, U.S.C. 819(d), and was placed on probation for 3 years. In addition, he was directed to work 5 hours each weekend for 6 months performing civic duty functions.

OTC&I No. 9

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Clinchfield Coal Company, et. al.
Pilgrim Mine

Western District of Virginia
Cr. No. 80-00088, Superseding, September 26, 1980
MSHA No. NORT-CR-80-2

### Reason for Investigation:

An MSHA district health official noted broad differences in dust concentration of dust samples submitted from the Pilgrim Mine. The situation was related to the District Manager who ordered a special investigation into the matter.

### Charges:

The investigation revealed that respirable dust sampling was being fraudently conducted; that mine data cards were been falsified and forged with miners' signatures; that training certificates were issued without the required training been conducted; and that the Pilgrim Mine officials and the Division Manager were all actively engaged in this illegal process. A 92 count indictment was handed down involving 30 U.S.C. Sections: 819(b) (willful violations or refusal to comply with health and safety standards by operators of mines); 819(c) (willful violations or refusal to comply with health or safety standards by directors, officers or agents of corporate mine operators); 819(d) (falsifying mine data cards, mine record books, and training certificates); and, 18 U.S.C. Section 1341 (mailing of falsified mine data cards).

### Disposition of Case:

On December 4, 1980, a plea bargain resulted in a fine of $100,000 against the corporation and the dismissal of the charges against the employees.

OTC&I No. 10

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Harold Jackson
d.b.a.
Little Egypt Coal Company

Western District of Virginia
CR. No. 80-00143, December 10, 1980
MSHA No. NORT-CW-79-72

### Reason for Investigation:

An MSHA district health official noted irregularities in this company's dust sampling. Shortly thereafter, an inspector issued a 104(d)(1) citation and subsequent orders on the dust sampling noted during his inspection. The irregularities were then submitted to the District Manager for review for possible knowing or willful violations. As a result of that review, a special investigation was initiated.

### Charges:

The evidence obtained in the investigation resulted in a 2 count indictment being handed down charging Harold Jackson with violating 30 U.S.C. Section 819(d) (falsification of records) for willfully falsifying 2 mine data cards and forging signatures of miners on same.

### Disposition of Case:

On May 25, 1981, Harold Jackson pleaded guilty, was fined $5,000 and placed on 2 years probation.

OTC&I No. 11

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
United Castle Coal Company, et. al.
No. 1 Mine

Western District of Virginia
Cr. No. 80-00093, Superseding, December 9, 1980
MSHA No. NORT-CV-80-20

### Reason for Investigation:

On April 22, 1980, a roof-bolting machine operator helper was fatally injured while assisting in roof-bolting operations without the use or benefit of safety jacks or posts. The accident investigation and subsequent inspection revealed numerous violations of the roof-control plan, ventilation system and permissibility, i.e.: not providing safety jacks or posts; no torque wrenches on roof-bolting machines; mining out past roof supports to such an extent that the machine operator was, on 3 occasions, 25 feet outby supports; crosscuts and entries on working sections not properly roof bolted; no roof sounding devices, (all in violation of 30 U.S.C. Section 862(a); insufficient air in working places (30 U.S.C. Section 863); and failure to maintain electrical equipment in permissible condition. The violations were sent to the District Manager for review who, in turn, ordered a special investigation.

### Charges:

The investigation resulted in a 52 count indictment being handed down against the corporation for violations of: Title 30, U.S.C. Sections: 862(a) (roof control plan); 863(a) (ventilation); 865(c) (permissibility); 865(r) (failure to maintain a deenergizer system); Section 819(b) (willful violations or refusal to comply with health and safety standards by operators of mines); Section 819(c) (willful violations or refusal to comply with health or safety standards by directors, officers, or agents or corporations); and, Title 18, U.S.C. Sections: 2 (aiding and abetting corporation in a willful violation); 1001, (falsifying records); and, 1503 (interfering with a Grand Jury witness).

### Disposition of Case:

On December 17, 1980, under the original indictment, a plea bargain resulted in a coal miner, Donnie Duncan, being fined $500 and placed on probation for 1 year for aiding and abetting a willful act in violation of Title 18, U.S.C.

Section 2. In addition, 6 agents of the corporation were sentenced as follows: Bill Bruner, General Mine Foreman, fined $5,000 and placed on 3 years active probation for violations of 30 U.S.C. Section 819(c) and 18 U.S.C. Section 1001; Hershel Stanley, Section Foreman, fined $1,000 and given 1 year probation for violations of 30 U.S.C. Section 819(c); Garnice Winebarger, Section Foreman, fined $5,000 for violations of 30 U.S.C. Section 819(b) and 18 U.S.C. Section 1001; E. O. Salyer, Jr., Section Foreman, fined $500 and placed on 1 year probation for violations of 30 U.S.C. Section 819(b); Larry Woliver,fined $3,000 and placed on probation for 2 years for violations of 30 U.S.C. Sections 819(b) and 18 U.S.C. Section 1001; and Larry Mosley, fined $5,000 and given 3 years probation for violations of 30 U.S.C. Section 819(c) and 18 U.S.C. Sections 1001 and 1503.

On April 9, 1981, under a superseding indictment, the company pleaded guilty to 9 counts, i.e., roof control, ventilation and electrical violations, falsifying records, and Grand Jury interference, and was fined $70,000.

OTC&I No. 12

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Vanhoose Coal Company, Inc.
No. 1 Mine
and
Larry Ratliff
and
Arthur White

Eastern District of Kentucky
Cr. No. 81-4, March 3, 1981
MSHA No. CW-79-44

### Reason for Investigation:

A fatal roof fall accident occurred on April 26, 1979. The accident investigation revealed that possible willful violations had occurred; therefore, a special investigation was conducted.

### Charges:

The investigation resulted in a 12 count indictment being handed down for violations of Sections: 819(b) (willful violations by mine operators); 819(c) (willful violations by agents of corporations); 819(d) (falsification of records) involving violations of Section 862(a) (roof control), Sections 863(d), (e) and (f) (ventilation violations).

### Disposition of Case:

On April 15, 1981, Larry Ratliff, Owner and Mine Superintendent, appeared before the U.S. District Court, Eastern District of Kentucky, waived formal arraignment and entered a plea of guilty to 2 counts of willfully violating Section 819(c) involving: (1) failure to follow the approved roof control plan; and, (2) failure to support the mine roof. The Court accepted the plea, fined Ratliff $5,000, sentenced him to 60 days in the Federal Rehabilitation Center in Lexington, Kentucky, and placed him on probation for 2 years. Charges against Arthur White, Section Foreman, were dismissed by the U.S. Attorney, Eastern District of Kentucky.
The corporation pleaded guilty to the same charges as Mr. Ratliff and was fined $1,000.

OTC&I No. 13

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Eastover Mining Company
and
Norman Yarborough
and
Larry Baker
and
Joseph (Teddy) Luther
and
Jim Kiser
and
William Blackburn
and
Doug Wright

Western District of Virginia
Cr. No. 80-00074, July 23, 1981
MSHA No. NORT-CSI-81-3

### Reason for Investigation:

A special investigation was initiated due to the excessive amount of citations and orders issued to this company concerning failure to use explosives and blasting devices in a permissible manner.

### Charges:

On July 23, 1981, a 7 count indictment was handed down against the corporation and 6 agents for willful violations of 30 U.S.C. Sections: 820(c) (willful violations of agents of corporations); 820(d) (willful violations of corporations); and 873 (illegal use of explosives); Title 18, U.S.C. Sections: 2 (aiding and abetting); 1001 (falsification of records); and, 201 (bribery).

### Disposition of Case:

On September 1, 1981, a plea bargain resulted in the company pleading guilty to Count 1 (illegal use of explosives) and being fined $1,000. The corporation agent, Larry Baker (Mine Foreman) was fined $1,000 and placed on probation for 1 year on the same count. The remaining counts were dismissed by the U.S. Attorney.

OTC&I No. 14

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Charles Wyatt
agent of
Paramount Coal Corporation

Western District of Virginia
Cr. No. 81-00029, March 12, 1981
MSHA No. NORT-CSI-81-7

### Reason for Investigation:

During an inspection of Paramount Mining Corporation's, Deep Mine No. 7, a Federal Coal Mine Inspector discovered large areas of mine roof supported with 18-inch roof bolts. The approved roof control plan requires 48-inch roof bolts. A special investigation was ordered conducted by the District Manager.

### Charges:

The investigation revealed that Charles Wyatt, Section Foreman, had acted alone and against written instructions from higher mine management. A 1 count indictment was handed down charging Charles Wyatt, Section Foreman, for willfully violating 30 U.S.C. Section 862(a). Due to the mitigating circumstances, whereas no criminal intent was shown by the corporation, the U.S. Attorney, after a review of these circumstances, declined to prosecute the corporation.

### Disposition of Case:

On April 29, 1981, Charles Wyatt pleaded guilty and was fined $2,500. All but $300 was suspended on successful completion of 18 months active probation.

OTC&I No. 15

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Triangle Research Corporation
and
Bill Corbett
and
Harry White

Western District of Virginia
Cr. No. 81-00063-R, June 30, 1981
MSHA No. NORT-CFR-79-05

### Reason for Investigation:

A noise survey was submitted to MSHA by Triangle Research Corporation, a contractor providing specialized services to coal companys, on a coal mine known to have been abandoned during the time of the survey. The case was submitted to the special investigations unit for investigation.

### Charges:

The investigation resulted in an 11 count indictment being handed down against the corporation and two agents: Bill Corbett, Owner; and Harry White, agent and employee, for willful violations of submitting falsified noise surveys and training certificates, in violation of 18 U.S.C. Section 1001, and for mail fraud, 18 U.S.C. Section 1341.

### Disposition of Case:

On January 11, 1982, a jury convicted the corporation on 6 counts of submitting falsified noise surveys and falsifying training certificates. The corporation president, Bill Corbett, was convicted on 1 count of falsely certifying a noise survey and 1 count of falsely certifying a training certificate. On motion of the U.S. Attorney, 5 counts of mail fraud were dismissed. During the trial, charges against Harry White were dismissed. The corporation was sentenced to a fine of $20,000, with $10,000 of the fine suspended on condition that the remaining $10,000 be paid within 1 year. Bill Corbett, Corporate President and owner was sentenced to a fine of $5,000 and three years imprisonment with the imprisonment suspended and placed on probation for three years on the condition the 5,000 is paid within six months.

An appeal of the jury conviction was made to the 4th Circuit Court of Appeals, which upheld the conviction.

OTC&I No. 16

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
B & W Coal Company
and
Leslie Charles
and
Bobby Charles
and
Don Wilson

Western District of Virginia
Cr. No. 81-00106-A (01), January 28, 1982
MSHA No. NORT-CSI-81-13

### Reason for Investigation:

A review of orders of withdrawal, issued to the company concerning faulty pillar recovery methods, resulted in the District Manager ordering a special investigation to be conducted.

### Charges:

The investigation resulted in a 12 count indictment being handed down against the corporation, the 2 mine owners and section foreman for willfully violating requirements of the roof control plan (30 U.S.C. Section 862(a)) all in violation of 30 U.S.C. Section 820(d) (willful violations of operators of mines); falsifying mine record books in violation of 18 U.S.C. Section 1001 and 18 U.S.C. Section 2 of aiding and abetting.

### Disposition of Case:

On February 28, 1982, in a plea bargain agreement, the corporation pleaded guilty to willfully violating Title 30, U.S.C. Section 820(d), was fined $15,000 and placed on 3 years probation. The 2 co-owners, Leslie Charles and Bobby Charles, pleaded guilty to one count each of willfully violating Title 30, U.S.C. Section 820(d), were fined $5,000 each and placed on 3 years active probation. The Section Foreman, Don Wilson, pleaded guilty to 1 count of violating Title 18, U.S.C. Section 2, was fined $1,000 and placed on probation for 1 year.

OTC&I No. 17

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
White Rock Coal Company
and
Thelma Adkins
and
Estil Adkins

Western District of Virginia
Cr. No. 81-00114-A(03), February 24, 1982
MSHA No. NORT-CSI-82-1

### Reason for Investigation:

A possible willful review of numerous citations and orders, issued during an inspection of the mine, resulted in a special investigation being conducted.

### Charges:

An 11 count indictment was handed down against the corporation and two agents, for violations of 30 U.S.C. Sections: 862(a) (roof control); 863(a) (ventilation); and 865(c) (permissibility); all in violation of 30 U.S.C. Section 820(d) (willful violation of mine operators) and 18 U.S.C. Section 2 (aiding and abetting).

### Disposition of Case:

On February 24, 1982, in a plea agreement with the U.S. Attorney, the corporation pleaded guilty to 8 counts of Title 30, U.S.C. Section 820(d) for willful violations of mandatory safety standards involving roof control, ventilation, and permissibility of electrical equipment, and was fined $10,000.

Thelma Adkins, President, pleaded guilty in the same court proceeding to willfully violating 3 counts of Title 30, U.S.C. Section 820(d) (roof control and ventilation), was fined $5,000 and given a 3-year prison sentence, which was suspended on the condition that she successfully complete 3 years of active probation.

Estil Adkins, Mine Superintendent, in the same agreement, pleaded guilty to 3 counts of willfully violating Title 30, U.S.C. Section 820(d) (roof control and permissibility) and Title 18, U.S.C. Section 2 (aiding and abetting), was fined $5,000 and placed on probation for 3 years.

OTC&I No. 18

# SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Kenneth Crawford
and
Kenny Ray Crawford
and
Jeffery Lee Crawford
and
Timothy Wayne Crawford

Eastern District of Kentucky
Cr. No. 81-10, January 27, 1982
MSHA No. BARR-CSI-81-1

## Reason for Investigation:

An investigation was initiated following the death of 5 miners in 3 separate accidents which occurred at illegal mines operated by the Crawford family.

## Charges:

A 33 count indictment, involving 30 U.S.C. Sections: 820(d) (willful violations by operators of mines); 863(d)(1), 863(f), 863(o) (ventilation violations); 872(a) (certified mine map availability); 873(b), 873(c) (blasting and explosives); 877(n) (self-rescue devices); 877(p) (identification check system); 825(d) (training of miners); and 30 CFR Part 48 (training standards), was handed down charging Kenneth Crawford with willful violations of the above-referenced sections. Mr. Crawford's 3 adult sons were charged in 8 counts as co-operators.

## Disposition of Case:

Trial was held in U.S. District Court, Eastern District of Kentucky, beginning January 27, 1982, and ending February 10, 1982. At the conclusion of the trial, Kenneth Crawford was found guilty on 10 counts and his 3 sons were found guilty on 5 counts each. Kenneth Crawford was sentenced to 18 months served time, 5 years probation to commence at the expiration of served time, and a $25,000 fine to be paid within 1 year after defendant's release following served time. Each of Kenneth Crawford's adult sons was sentenced to 2 years imprisonment and fined $1,000 each. Their imprisonment was suspended and each was placed on probation for 5 years.

Special provisions were added to each defendant's probation:

1. If continuing to work in the mining industry, shall attend mine safety school of one week duration each year.
2. Shall not operate an unpermitted mine.
3. Shall not refuse to allow inspectors to inspect any mine he may be operating.
4. Shall not run from, or hide inside, any mine he may be operating when inspectors arrive at the mine.
5. Must pay all taxes, insurance, severance taxes, withholding taxes, workmans' compensation and social security.
6. Shall pay fine as directed.

OTC&I No. 19

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Lawrence Crawford
and
Dennis Ray Crawford

Eastern District of Kentucky
Cr. No. 81-11, March 30, 1982
MSHA No. BARB-CSI-81-1

### Reason for Investigation:

This investigation was initiated following the deaths of 5 miners in 3 separate accidents which occurred at illegal mines operated by the Crawford family.

### Charges:

An 11 count indictment involving 30 U.S.C., Sections: 820(d) (willful violations by operators of mines); 863(d)(1), 863(f), and 863(o) (ventilation violations); 872(a) (certified mine map availability); 873(b), 873(c) (blasting and explosives); 877(m) (emergency medical supplies and transportation of injured); 825(a) (training of miners); and 30 C.F.R. Part 48, Subpart A (training standards), was handed down charging Lawrence and Dennis Ray Crawford with willful violations of the above-referenced sections.

### Disposition of Case:

Both defendants pleaded guilty to 3 counts of willful violations in U.S. District Court, Eastern District of Kentucky on January 27, 1982. Each defendant was sentenced to 3 years (90 days to be actually served in prison), a $20,000 fine and 5 years probation. The Judge set special terms of probation: prohibiting further illegal mining activities, requiring 1 week of miner training per year and requiring 16 hours of community service per month during the first year of probation.

OTC&I No. 20

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Apache Coal Company, Inc.
and
Joda Blankenship
and
James M. Bostic

Western District of Virginia
Cr. No. 82-00050, June 8, 1982
MSHA No. NORT-CSI-82-7

### Reason for Investigation:

After a review of citations and orders issued at this company's mine during a regular inspection, a special investigation was ordered to determine if the violations were willfully committed.

### Charges:

This investigation resulted in a 7 count indictment being handed down charging Apache Coal Company, Inc., Joda Blankenship, Corporate President, and James M. Bostic, Section Foreman, with willfully making false and fictitious representations in the Pre-Shift and On-Shift Examinations Record Books, (violations of 18 U.S.C. Section 1001); and willfully disregarding the requirements as outlined in the approved roof control plan, (violation of 30 U.S.C. Section 862); all in violation of Sections 1001 (falsifying records) and 2, (aiding and abetting willful violations), Title 18 U.S.C. and Section 820(d) (willful violations by mine operators), Title 30 U.S.C.

### Disposition of Case:

The corporation, in a plea agreement, pleaded guilty to falsifying the mine record books, was fined $10,000 and placed on 1 year probation. The fine was suspended and the corporation ordered by the Court to pay $19,000 in delinquent civil penalties.

The Mine Owner, Joda Blankenship, pleaded guilty to falsifying the mine record books, was fined $10,000 and given a 2 years suspended sentence. The fine was also suspended; however, the Court made Blankenship totally responsible to ensure that the civil penalties were paid within the probation period of 2 years or serve the prison sentence. Blankenship was also ordered to pay all future civil penalties in a timely and orderly fashion.

The Section Foreman, James M. Bostic, pleaded guilty to falsifying the record books, was given a 1 year suspended sentence and 1 year of probation.

OTC&I No. 21

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Horne and Riggs Coal Corporation
and
James Riggs
and
Charles Jennings

Western District of Virginia
Cr. No. 82-00061, July 14, 1982
MSHA No. NORT-CSI-82-15

### Reason for Investigation:

A verbal complaint to the District Manager from employees at the corporation's mine concerning falsified noise surveys resulted in a special investigation into the complaint being ordered.

### Charges:

The investigation resulted in a 4 count indictment being handed down charging the Corporation; James Riggs, Corporate President; and Charles L. Jennings, Health Technician, with submitting false noise surveys and records to the Federal Government for 23 individual miners at its No. 1 underground coal mine, all in violation of Section 820(d) (willful violations by operators of mines); Section 820(f) (falsification of records); Title 30, U.S.C.; and Section 2 (aiding and abetting willful violations), Title 18, U.S.C.

### Disposition of Case:

The Corporation, in a plea agreement, pleaded guilty to 2 counts of submitting falsified documents to the Mine Safety and Health Administration, was fined $10,000 and placed on 2 years probation. In the same agreement, charges against James Riggs, Corporate President, were dismissed. Charles Jennings pleaded guilty to 1 count of falsification of records that were submitted to the Mine Safety and Health Administration, was fined $1,000 and placed on 2 years active probation.

OTC&I No. 22

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Peabody Coal Company
and
Anthony Moore
and
William Smiley

Western District of Kentucky
Cr. No. 82-00012-0, December 9, 1982
MSHA No. MADI-CFR-80-2

### Reason for Investigation:

Representatives of the United Mine Workers of America requested an investigation under Section 110(f) of the Mine Act regarding possible falsification of records in the respirable dust program at Peabody Coal Company.

### Charges:

A special investigation resulted in a 25 count indictment being handed down against Peabody Coal Company and 2 Dust-Technicians for submitting false dust samples and records to the Federal Government for 25 miners at its Camp No. 2 underground mine, all in violation of Section 2, Title 18, U.S.C. (aiding and abetting), and Title 30, U.S.C. Section 820(f) (falsification of records).

### Disposition of Case:

On December 8, 1982, in a plea bargain agreement, Peabody pleaded "nolo contendere" to 13 of the 25 counts and "nolle prosequi" was entered for the remaining 12 counts.

The company was fined $130,000. The 2 Dust-Technicians were placed on Pretrial Diversion and given 1 year of probation.

OTC&I No. 23

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Westmoreland Coal Company
and
Kyle Jones
and
Gary Neil
and
Mark McClure
and
Tom Markham
and
Frank Javins, Jr.

Southern District of West Virginia
Cr. Nos. 82-20085 and 82-20099
MSHA No. HOPE-CSI-81-1

### Reason for Investigation:

An accident investigation into a mine explosion which resulted in the deaths of 5 miners revealed several violations of the mandatory safety standards and gave rise to a Federal Grand Jury investigation.

### Charges:

A 16 count indictment was returned against the corporation (which had a prior similar conviction) covering falsifaction of maps and records, failure to ventilate, failure to preshift the mine, and failure to make weekly examinations.

### Disposition of Case:

Pursuant to a pre-indictment plea agreement, the corporation pleaded guilty to 11 misdemeanor counts for violations of 30 U.S.C. Sections 863(b) and 863(m) (ventilation and idle area examinations); 863(r) (overcast and undercast intake air requirements); 863(f) (weekly examinations for hazardous conditions in returns and splits of air); 863(g) (weekly ventilation examinations for volume of air in main intakes and return entries); 863(o) (ventilation system and methane and dust control plan); 863(y) (separation of intake and return aircourses from belt haulage entries); 868(m) (moving of power centers, deenergizing); and 865(f) (deenergizing of electrical equipment before repairs), and 5 felony counts for violations of 30 U.S.C. Section 820(f) (falsification of mine record books).

The company agreed to pay the maximum assessible fine for these violations, which was $600,000.

On December 20, 1982, the continuing investigation resulted in a 14 count indictment being returned against agents of the operator, Kyle Jones, Mine Manager, and Gary Neil, 3rd Shift Mine Foreman. Trial was conducted on April 5, 1983, and Jones and Neil were convicted under 30 U.S.C. Section 820(c) (1982) as agents of corporate coal mine operators who "knowingly authorized, ordered, or carried out" violations of the safety standards. Jones was held criminally liable for his role in: (1) the movement of a power center while energized, in violation of 30 U.S.C. Section 868(m) (1982) (Count II); (2) the failure to conduct adequate weekly examinations, in violation of 30 U.S.C. Section 863(f) (1982) (Count V); and, (3) the failure to conduct a weekly examination of the 1 East and 2 South areas of the mine commencing the week of October 20, 1980, also in violation of 30 U.S.C. Section 863(f) (1982) (Count III). Neil was convicted for his role in causing miners to enter uninspected idle areas, in violation of 30 U.S.C. Section 863(m) (1982) (Counts IX and XIII). They were acquitted on other related counts.

Kyle Jones was sentenced to a fine of $5,000, given a 30-day jail sentence and placed on 3 years of probation. Jones was also ordered to work 2,000 hours of community service.

Gary Neil was sentenced to a fine of $1,000, given 3 years of probation and ordered to work 832 hours of community service.

Both Jones and Neil appealed their convictions. On June 1, 1984, the United States Court of Appeals, 4th Circuit, affirmed their convictions.

The following agents of the corporation were charged, by way of Information by the United States Attorney, and reached plea agreements with the Federal Government. The results of these agreements are as follows:

On March 15, 1983, Mark McClure, General Mine Foreman, pleaded guilty to 3 misdemeanor counts of violating 30 U.S.C., Sections 863(m), 863(b) and 863(f), was fined $2,500 and ordered to perform and work 1 day a week community service over a 3-year probationary period.

On March 15, 1983, Tom Markham, Day Shift Mine Foreman, pleaded guilty to 2 misdemeanor counts for violating 30 U.S.C. Sections 863(m) and 868(m), was fined $1,000, ordered to perform 1 day a week community service work over a 2-year probationary period.

On March 15, 1983, Frank Javins, Jr., 2nd Shift Mine Foreman, pleaded guilty to 1 misdemeanor count for a violation of 30 U.S.C. Section 863(m) and was placed on probation for 1 year.

OTC&I No. 24

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Lewis Campbell
d.b.a.
Emini Coal Company
and
Dennis Mullins
and
William Couch

Western District of Virginia
Cr. No. 83-0005
MSHA No. NORT-CSI-82-2

### Reason for Investigation:

A fatal roof fall accident occurred at the company mine. The victim was 45 feet beyond roof supports during the process of recovering a continuous-mining machine from beneath a roof fall. A special investigation was ordered conducted after a review of the citations and orders issued during the accident investigation.

### Charges:

A 12 count indictment was handed down on January 1, 1982, charging the mine operator with willfully violating Title 30, U.S.C., and two foremen with aiding and abetting in violation of Section 2, Title 18, U.S.C.

### Disposition of Case:

On June 24, 1982, Lewis Campbell, Operator, pleaded guilty to 3 counts of failing to provide adequate roof supports in the mine, failing to maintain adequate roof support materials at the mine, and failing to provide ventilation in the mine, in violation of Title 30, U.S.C. Sections 862(a) and 863(c), respectively. On September 21, 1982, the Mine Operator was fined $3,600 and placed on 3 years probation. The 2 foremen were placed on Pretrial Diversion, with probation for 1 year.

OTC&I No. 25

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
D. O. & W. Coal Company
and
Joe Taylor
and
Willoughby Bailey

Western District of Virginia
Cr. No. 83-00048-B (01), September 22, 1983
MSHA No. NORT-CSI-82-10

### Reason for Investigation:

This investigation was initiated following a coal mine belt conveyor fire.

### Charges:

The investigation resulted in the United States Attorney for the Western District of Virginia, filing a Criminal Information against D. O. & W. Coal Company and 2 corporate agents, Joe Taylor, Mine Superintendent, and Willoughby Bailey, Section Foreman, charging the company and its agents with 10 counts of willfully violating Title 30, U.S.C. Sections: 864(a) (accumulations of combustible materials); 864(c) (failing to provide rock dust); all in violation of 820(c) (liability of corporate officers, directors, and agents); and 820(d) (criminal penalties for corporations and its agents)

### Disposition of Case:

A plea agreement was reached whereby the corporation pleaded guilty in Federal Court on September 22, 1983, was fined $10,000 with $2,500 suspended, with $7,500 to be paid immediately. Charges against the agents were dismissed.

OTC&I No. 26

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Don Hawkins
agent of
Fox Ten Mining Company

Western District of Virginia
Cr. No. 83-00123-A, December 16, 1983
MSHA No. NORT-CSI-83-10

### Reason for Investigation:

A special investigation was ordered conducted after a review of citations and orders issued at the company mine for failure to provide temporary roof supports, accumulations of combustible materials and failure to conduct pre-shift examinations of the mine.

### Charges:

The investigation resulted in a 6 count indictment being handed down against Don Hawkins, agent of Fox Ten Mining Company, for willfully violating Title 30, U.S.C. Sections: 863(a) (failure to provide temporary roof supports during roof bolting operations); 863(d) (failure to conduct pre-shift examinations of the mine); 864(a) (allowing dangerous accumulations of loose coal, coal dust, and float coal dust within the working section of the mine); all in violation of 30 U.S.C. Section 820(d) (willful violations or refusal to comply with safety and health standards by directors, officers and agents of corporations). Hawkins was also charged with violating 30 U.S.C. Section 820(f) for falsifying the on-shift and pre-shift examination record books.

No evidence was obtained to indicate that any corporate official was aware of the conditions in the mine until the mine was closed by Federal Inspectors. The evidence obtained indicated that agent Hawkins acted alone. While a technical violation by the corporation existed, no intent to willfully violate the safety standards was ascertained on the the part of the corporation. These circumstances were presented to the U.S. Attorney who declined prosecution of the corporation.

Disposition of Case:

On December 16, 1983, in a plea agreement, Don Hawkins pleaded guilty to violating 30 U.S.C. Section 820(d) concerning safety standards of: (1) failing to provide temporary supports; and, (2) violating 30 U.S.C. Section 820(f) for falsifying the mine record books. Hawkins was ordered to pay a fine of $7,500, with all but $2,000 suspended on successful completion of 3 years active probation. Hawkins was also ordered to perform 150 hours of community service.

OTC&I No. 27

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Steven Elgin

Western District of Virginia
Cr. No. 83-00051-R, January 26, 1984
MSHA No. NORT-CSI-83-6

### Reason for Investigation:

This investigation stemmed from a willful investigation occuring at the C. C. & P. Coal Company, No. 1 Mine, Federal Mine I.D. No. 44-03868. During this investigation, employees of this mine testified before a Federal Grand Jury that no noise surveys were ever taken on their environment. Since certified moise surveys were submitted to MSHA on these employees, it was decided to monitor the company submitting the surveys by the MSHA Health Office within the District. As a result of this monitoring, a separate case was assigned for investigation.

### Charges:

The defendant, Steven Elgin, Owner of Environmental Mine Services, a contractor providing specialized services to mining firms, was indicted by a Federal Grand Jury on May 12, 1983, as a result of the investigation. Elgin was charged with 5 counts of falsifying noise survey documents, in violation of Title 18, U.S.C. Section 1001 and 5 counts of mail fraud in violation of Title 18, U.S.C. Section 1341.

### Disposition of Case:

On January 26, 1984, Steven Elgin was convicted in Federal Court on 4 felony counts of violating Title 18, U.S.C. Sections 1001 and 1341, 2 felony counts each, respectively. Elgin was fined $20,000, with $10,000 suspended, on the condition that he successfully complete 3 years of active probation. Elgin was also ordered to perform 100 hours of community service.

OTC&I No. 28

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Condor Coal Company, Incorporated, et. al.

Western District of Virginia
Cr. No. 83-00136-A, February 7, 1984
MSHA No. NORT-CSI-83-3

### Reason for Investigation:

The investigation was assigned after a review of citations and orders issued at the company's No. 1 Mine for violations involving: (1) a total absence of line curtains or other devices on the working section to direct air to the working places; and, (2) several serious violations of the approved roof control plan, i.e., failure to provide temporary roof supports during roof bolting operations, failure to maintain an adequate supply of roof support materials on the working section, and working inby permanent roof supports.

### Charges:

The investigation resulted in a 12 count indictment being handed down on November 18, 1983, charging the corporation and 4 agents with willfully violating Title 30, U.S.C. Sections: 862(a) (roof control); 863(c) (ventilation); and 820(f) (falsification of the mine examination record books).

### Disposition of Case:

On February 7, 1984, in a plea agreement, Condor Coal Company, Incorporated, pleaded guilty to falsifying the pre-shift record books, Title 18, U.S.C. Section 1001, and was fined $10,000 with $5,000 suspended on successful completion of 2 years of probation.

Mac Gamble, Mine Superintendent, pleaded guilty to willfully authorizing, ordering and carrying out the corporation's violations of not providing adequate roof supports, Title 30, U.S.C. Section 862(a), and Title 30, U.S.C. Section 863(c), failing to install and maintain line brattice within the mine to provide ventilation. Gamble was fined $3,700 with all but $1,000 suspended, pending successful completion of 2 years of active probation and performing 100 hours of community service.

Carl Eugene Thompson, Section Foreman, pleaded guilty to willfully authorizing, ordering, and carrying out the corporation's violation of Title 30, U.S.C. Section 863(c), failure to install and maintain line brattice to provide ven-and was fined $1,000 and placed on active two (2) years probation.

Gary Lynn Phillips, Section Forman, pleded guilty to will fully carrying out the corporation's violation of 30 U.S.C., Section 863(c), was placed on 18 months active probation and ordered to perform 50 hours of community service.

Lee Ray Taylor, Section Foreman, who fully cooperated with the U.S. Government and was instrumental in assisting the Government in obtaining the convictions, was placed on Pre-Trail Diverson and given one (1) year probation.

OTC&I No. 29

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Grundy Mining Company, Inc.

Eastern District of Tennessee
Southern Division
Information Docket No. 85-06M
MSHA No. BARB-CSI-82-3

### Reason for Investigation:

This case is the outcome of an MSHA investigation into a methane gas explosion which occurred at the Grundy Mining Company, Inc., mine at Whitwell, Tennessee, on December 8, 1981, which resulted in the deaths of 13 miners.

### Charges:

A criminal Information was filed by the United States Attorney, Eastern District of Tennessee, charging Grundy Mining Company, Inc., with willfully violating Title 30, U.S.C. Sections: 877(c) (carrying and using smoking materials underground); 863(o) (violating the ventilation system and methane and dust control plan); 863(d) (violation of pre-shift examinations); 863(u) (failure to withdraw personnel during modfication of main air current or split of air); 863(r) (violation of overcast and undercast intake air split requirements); all in violation of Title 30, U.S.C. Section 820(d) (willful violations or refusal to comply with safety and health standards by operators of mines).

### Disposition of Case:

On January 14, 1985, in Federal Court, Eastern District of Tennessee (Southern Division), Grundy Mining Company, Inc., entered guilty pleas to the charges in the criminal Information, was fined $21,000 on each count, for a total of $105,000.

OTC&I No. 30

# SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
4-A Coal Company, Inc.
and
James Melvin Ashby
and
Irvin Justus
and
Richard Woody

Western District of Virginia
March 18, 1985
MSHA No. NORT-CSI-83-13

## Reason for Investigation:

The investigation was initiated through a review of citations and orders issued during an inspection of the company's mine involving violations of: roof control, i.e., working inby roof supports and failing to provide safety jacks or posts during roof bolting operations; ventilation, i.e., operating the mine with the fan shut off, failing to install line brattice to direct air to the working places on the section, and bridging out of methane monitors; non-permissible electrical equipment being used in the working places of the mine; failing to conduct electrical, pre-shift and on-shift examinations; and adobe blasting by placing open and unconfined charges of explosives in roof fall debris to break up the rock.

## Charges:

The investigation resulted in a 15 count indictment being brought on June 14, 1984, charging the corporation and 3 of its agents with violating Title 30, U.S.C. Sections: 862(a) (roof control); 863(a),(c),(d), (e) and (l) (ventilation); 865(a) (electrical equipment); and 873(a) (blasting unconfined shots); all in violation of 30, U.S.C. Section 820(c) (liability of corporate directors, officers or agents) and Section 820(d) (willful violations of corporations). Violations of Title 30, U.S.C. Section 820(f) (falsifying mine records) were also incorporated within the indictment.

Disposition of Case:

On March 18, 1985, sentencing and final disposition of the above-stated case occurred as follows:

4-A Coal Company, Inc., pleaded guilty to 3 counts of willfully violating Federal mine safety statutes, i.e., roof control, ventilation and adobe blasting, and was fined $25,000. The fine was suspended by the Court, the corporation was placed on 2 years probation and ordered to pay within 30 days, $22,000 in civil penalties assessed against the corporation for the violations.

James Melvin Ashby, Superintendent and Agent of 4-A Coal Company, Inc., pleaded guilty to 3 counts of willfully violating Federal mine safety statutes (roof control, ventilations and adobe blasting), was fined $3,000 and placed on 2 years of active probation.

Irvin Justus, Foreman and Agent of 4-A Coal Company, Inc., pleaded guilty to 2 counts of willfully violating Federal mine safety statutes (roof control and ventilation), was fined $750 and placed on 18 months of active probation.

Richard Woody, Foreman and Agent of 4-A Coal Company, Inc., pleaded guilty to 3 counts of willfully violating Federal mine safety statutes (roof control, ventilation, and adobe blasting), was fined $1,500 and placed on 2 years of active probation.

OTC&I No. 31

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Nunley and Thompson Coal Company, Inc.
and
James Earl Nunley

Eastern District of Tennessee
Cr. No. 1-84-48, September 13, 1984
MSHA No. BARB-CSI-82-05

### Reason for Investigation:

A special investigation was requested by the District Manager after a fatal accident which occurred on April 22, 1982. This mine had been operating illegally for several years.

### Charges:

A 2 count indictment was handed down charging the corporation with willfully violating Title 30, U.S.C. Section 863(c) (failing to provide a certified person to conduct pre-shift and on-shift examinations at the corporation's mine), all in violation of 30 U.S.C. Section 820(d) (corporate liability) and charging James Earl Nunley, agent of the corporation, with violating Title 30, U.S.C. Section 820(c) (authorizing, ordered and carrying out the corporation's willful violation).

### Disposition of Case:

On September 13, 1984, the corporation, in a plea agreement, pleaded guilty to the willful violation of 30 U.S.C. Section 863(c) and was fined $5,000.

In the same plea agreement, James Earl Nunley pleaded guilty to violating 30 U.S.C. Section 820(c) and was placed on probation for a period of 1 year.

OTC&I No. 32

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America
vs.
Lee Allen Miller
and
James Wesley Miller
and
Paul Miller
and
Douglas Casey
and
David Clark Cooper
and
Walter E. Cooper
and
Donald Joe Robinette
and
Willard Ball, Jr.

Western District of Virginia
Cr. No. 85-00003-A 02
MSHA No. NORT-CSI-84-13

### Reason for Investigation:

A dual complaint, one from a woman concerned for the welfare of her minor son working in an illegal mine, and one from the Russell County Sheriffs' Department, was made to the District Manager concerning illegal outlaw mines being operated in Russell County, Virginia. The District Manager ordered a special investigation into the complaints.

### Charges:

The investigation revealed that approximately 50 illegal mines were actively in operation in the Counties of Russell, Buchanan and Tazewell. With the exception of 3 major illegal operations, the remainder of the illegal mines found were small 2- and 3-man operations, using wheelbarrows and pickup trucks which were closed by Federal Inspectors. The large operations were utilizing large coal trucks and non-permissible mining equipment. The investigation also revealed that the mines were operated without proper roof supports and ventilation, illegally using explosives, non-permissible equipment, with no means to detect methane, black damp, low oxygen, or other dangerous gases. On various occasions, minor children were employed to work in these mines and the mines were not permitted.

In September 1985, a Federal Grand Jury handed down a 25 count indictment charging 6 individuals, Lee Allen Miller, Paul Miller, James Miller, Douglas Casey, Don Robinette and David Cooper, with operating illegal non-permitted mines in violation of Title 30, U.S.C. Sections: 862(a) (roof control); 863(a), (c) and (d) (ventilation); 865(a) (permissible electrical equipment); 873(c) (explosives); all in violation of Title 30, U.S.C. Section 820(d) (willful violations by operators of mines). A seventh person, Willard Ball, Jr., a coal-dock operator, was charged with violating Title 18, U.S.C. Section 2, of aiding and abetting the other 6 persons in their illegal activities by providing an outlet for the illegal coal, by buying said product and shipping same into commerce, knowing that the coal was being mined in violation of Federal mining laws.

Disposition:

On October 15, 1985, the operators of the 3 illegal mining operations, Douglas Casey, Don Robinette, David Cooper, James Wesley Miller, Lee Allen Miller, and Paul Miller, entered guilty pleas to willfully violating Title 30, U.S.C. Section 820(d); each was fined $3,000 and placed on 3 years of active probation.

On March 5, 1986, Willard Ball, Jr., entered a guilty plea to violating Title 18, U.S.C. Section 2 (aiding and abetting), was fined $3,000 and placed on 3 years of active probation.

OTC&I No. 33

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America

vs.

C. and R. Energy, Inc.
and
Robert Ratliff
Richard Coleman
Edward Wilburn
Hassell Vanover

Western District of Virginia
Criminal No. 85-00101, December 12, 1985
MSHA No. NORT-CSI-85-2

### Reason for Investigation:

This investigation was initiated after the routine review of two imminent danger orders of withdrawal issued during an inspection at the mine.

### Charges:

A nine count indictment, involving 30 U.S.C., Sections 820(c), (d), and (f), charged the corporation and four corporate agents with willfully violating mandatory safety standards covering record falsification, inadequate ventilation, failure to support the mine roof and ribs and improper use of explosives.

### Disposition of Case:

On August 4, 1986, the corporation pleaded guilty to three counts for violations of 30 U.S.C. 820(d). The corporation was fined $10,000.00; however, the corporation can pay $7,651.00 owed in back assessments in lieu of the $10,000.00. Edward Wilburn pleaded guilty to three counts for violations of 30 U.S.C. 820(c). Wilburn was fined $1,500.00 and placed on two years active probation. Robert Ratliff pleaded guilty to three counts for violations of 30 U.S.C. 820(c). Ratliff was fined $2,000.00 and placed on three years active probation. Richard Coleman pleaded guilty to three counts for violations of 30 U.S.C. 820(c). Coleman was fined $2,000.00 and placed on three years active probation. Hassell Vanover pleaded guilty to one count for violation of 30 U.S.C. 820(c). Vanover was fined $500.00 and placed on one year active probation.

OTC&I No. 34

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America

vs.

William McCormick
and
Danny Hopkins

Southern District of West Virginia
Criminal No. 2: 86-00020
MSHA No. HOPE-CFR-81-2

### Reason for Investigation:

During an inspection of the No. 1 preparation plant operated by Delta Minerals Incorporated, an MSHA coal mine inspector issued a withdrawal order under Section 104(g) for an employee not having received the mandatory training required by the Mine Act. The next day the mine operator produced the required MSHA 5000-23 forms certifying that the plant employees had received the required training. The MSHA inspector then questioned other employees who informed him that no such training had been given. The matter was then referred to the district senior special investigator. After review, the district manager ordered a special investigation to determine if training certificates required by the Mine Act were being falsified.

### Charges:

The investigation resulted in a Federal grand jury bringing a 6-count indictment on January 29, 1986, against general mine foreman William McCormick, for willfully violating Section 820(f), Title 30, United States Code (falsification of training records). On the same date, Danny Hopkins, owner/operator of Safety First, a consulting firm which provides training required by the Mine Act, signed a pre-indictment plea agreement to plead guilty to one felony count of falsifying training records.

### Disposition of Case:

On March 17, 1986, Danny Hopkins, owner/operator of Safety First, pleaded guilty in Federal court to one felony count of falsification of training records. Hopkins was sentenced on June 3, 1986, and received a fine of $1,000 and three years active probation.

On April 18, 1986, William McCormick was convicted on four counts of falsifying training records. McCormick was sentenced on June 3, 1986, to five years active probation and ordered to perform 150 eight-hour days of public service work.

OTC&I No. 35

## SUMMARY OF CRIMINAL PROCEEDINGS

Office of Technical Compliance and Investigation
Coal Mine Safety and Health

United States of America

versus

Peabody Coal Company
and
Billie Gibbons
and
William A. Absher
and
Lawrence Marcum
and
Paul Dismuke
and
Danny R. Winkleman

Southern District of Illinois
Criminal No. 85-40056
MSHA Case No. VINC-CSI-83-01

### Reason for Investigation:

On December 22, 1982, a roof fall accident occurred at the company's Eagle No. 2 Mine which resulted in fatal injuries to one section foreman and lesser injuries to another foreman and a workman. As a result of testimony and evidence obtained during the fatal accident investigation, which strongly indicated that the workers were working under known loose, hazardous, and unsupported roof, in direct violation of § 75.200 of Title 30 C.F.R. and that the violations were committed under the direction of, and with knowledge and apparent encouragement and approval of various mine officials. As a result of these findings, the district manager required that a special investigation be assigned to determine if the violations were knowingly and willfully committed.

### Charges:

The special investigation resulted in a Federal grand jury bringing a 12-count indictment against Peabody Coal Company and eight individuals. Charges against three of the individuals and one count against the company were dropped in February, 1986.

### Disposition of Case:

On June 2, 1986, in a plea agreement, Peabody Coal Company pleaded guilty in the United States District Court for the Southern District of Illinois to two misdemeanor counts of willfully violating mandatory safety standards of the

1977 Mine Safety and Health Act. Also as a result of the plea agreement, the remaining five employees charged in the indictment were placed on a pre-trial diversion program requiring these employees to supervise or be present at future roof fall rehabilitation at the mine. On August 7, 1986, in Federal district court, Peabody Coal Company was fined $25,000 on each of the two counts with the fines to be paid on or before August 25, 1986.

The CHAIRMAN. Were some of these convictions of major coal companies?

Mr. GOODE. Yes, sir.

The CHAIRMAN. How many convictions were there nationwide during that same period?

Mr. GOODE. I believe, 34 or 35.

The CHAIRMAN. So there were 34 or 35 nationwide, and 24 of those were in your district?

Mr. GOODE. Yes, sir.

The CHAIRMAN. Were you and the other special investigators all inspectors prior to becoming special investigators?

Mr. GOODE. Yes, sir, we were.

The CHAIRMAN. Were all of you graduates of the Treasury Department's Criminal Investigations Academy in Glenco, Georgia?

Mr. GOODE. Yes, sir.

The CHAIRMAN. Is that a good Academy?

Mr. GOODE. Yes, sir; it is the best.

The CHAIRMAN. Mr. Howell, what is your present position?

Mr. HOWELL. I am the Senior Special Investigator in District 10, Madisonville, Kentucky.

The CHAIRMAN. And how long have you been in that position?

Mr. HOWELL. Since March of 1986.

The CHAIRMAN. And do you have a family as well?

Mr. HOWELL. Yes, I do.

The CHAIRMAN. How long have you been with the agency?

Mr. HOWELL. Since 1977.

The CHAIRMAN. Prior to your present position, did you serve with Mr. Goode as a Special Investigator in Norton, Virginia?

Mr. HOWELL. Yes, I did.

The CHAIRMAN. For how long?

Mr. HOWELL. From April 1981 until January 1985.

The CHAIRMAN. And how would you characterize that group of special investigators?

Mr. HOWELL. I would say the special investigators in District 5 are the most professional and the best-qualified investigators that I have worked with anywhere in the nation, including FBI, ATF, or whatever we have worked with, a lot of the other investigative arms of the Government.

The CHAIRMAN. Mr. Rife, what is your present position?

Mr. RIFE. I am a Special Investigator in Sub-District 5.

The CHAIRMAN. Do you have a family as well?

Mr. RIFE. Yes, sir.

The CHAIRMAN. And how long have you been with the agency?

Mr. RIFE. Since 1971.

The CHAIRMAN. Were you also part of the Special Investigation Unit?

Mr. RIFE. Yes, sir, since 1978.

The CHAIRMAN. And was it an effective Unit?

Mr. RIFE. I think so, sir.

The CHAIRMAN. And what is your present position, Mr. Owens?

Mr. OWENS. I am a Special Investigator out of the Richland Sub-District Office.

The CHAIRMAN. And how long have you been with the agency?

Mr. OWENS. Since January of 1974.

The CHAIRMAN. And you have a family as well?

Mr. OWENS. Yes, sir.

The CHAIRMAN. Did you also serve in the Special Investigations Unit?

Mr. OWENS. Yes, sir. I started in July of 1979.

The CHAIRMAN. And was Mr. Goode an effective leader of that Unit?

Mr. OWENS. Yes, sir, he was.

The CHAIRMAN. And Mr. Howell, did you at one point close down a mine which you were then ordered by a district official to reopen?

Mr. HOWELL. Yes, sir, I was.

The CHAIRMAN. Why did you close the mine?

Mr. HOWELL. I was called in—it was the Resident Mines, and I had been called in—I had been assigned a new supervisor, and they called me in and asked me to accompany a junior inspector to the mines, because he was having problems. I went to the mines and issued a closure order for failure to properly support the roof, temporarily, while drilling holes to blast out for overcast, improperly supported roof area, and for not having scaling devices and other equipment. The roof was broken. There was a rock, approximately four-foot by three-foot by two-foot laying on top of the cabinet, and there was no way of removing any of the overburden without exposing the people.

The CHAIRMAN. Who told you to let it reopen?

Mr. HOWELL. I was instructed by the Sub-District Manager, Bill Clemons, to go back to the mines and to vacate, to do away with the order, in that holes being drilled would not have roof bolts put in them, and therefore, even though they did everything else to install the bolt except put the bolt into it, that they did not have to comply with the roof control plan; and that the order had been issued improperly.

The CHAIRMAN. Do you remember who told you to have it reopened?

Mr. HOWELL. Bill Clemons, the Sub-District Manager.

The CHAIRMAN. And did the mine finally reopen?

Mr. HOWELL. On May the 14th, I received a memorandum from Administrative Law Judge Broderick, saying that he had received information from high-ranking MSHA officials that the order had been issued and thereby we were to make the paperwork reflect the same. And John H. O'Donnell, trial attorney for, I believe, MSHA, also sent a memorandum along saying that we would vacate the order, to comply with Judge Broderick's directives.

The CHAIRMAN. Were you allowed to go back to the mine?

Mr. HOWELL. I was never allowed to return to the mine, sir.

The CHAIRMAN. After the mine reopened, did a United Mine Worker representative send you a letter, complaining about the bad conditions still existing in the mine?

Mr. HOWELL. A member of United Mine Workers sent a letter to me and asked me if he should submit it, because he was fearful that it would cost me problems on the job. My recommendation to him was to do whatever he felt was necessary, and I did not encourage him to file the letter with them. But there was a letter written by UMW, yes, sir.

The **CHAIRMAN**. Did someone go out to the mine?

Mr. **HOWELL**. My understanding is that on Friday afternoon after the order was issued, on the following Friday at about 3:00, a coal mine inspector supervisor did go to the mines and look at the area.

The **CHAIRMAN**. So district supervisors went out to help the mine operator clear up the mine?

Mr. **HOWELL**. I do not know his intent when he went out there.

The **CHAIRMAN**. What do you think of that? Is that not unusual?

Mr. **HOWELL**. I would think that they would invite the issuing inspector to go back and point out what he had seen, if he was going back to the mines—he was my immediate supervisor at the time.

The **CHAIRMAN**. Did you think of resigning?

Mr. **HOWELL**. Yes, I did.

The **CHAIRMAN**. Why didn't you?

Mr. **HOWELL**. Well, the order was issued in March 11th. From March 11th until I think it was sometime in May of 1981, there were extreme pressures. I was not allowed to talk to other people or to leave the second floor of the district building. When I had to go out in the mornings, I had to report exactly where I was going to; if I was going to issue a citation, I had to go in and explain the citation prior to issuing it, if possible, and this was an imminent danger, and that type of thing.

The **CHAIRMAN**. Did you feel you were not being supported by district officials?

Mr. **HOWELL**. I only had problems with the two individuals. The majority of the people at that time were very cooperative.

The **CHAIRMAN**. Mr. Owens, did you have a similar experience when you closed down the mine? Were you at any time told to vacate a closure order?

Mr. **OWENS**. Yes, sir, I was.

The **CHAIRMAN**. And did you?

Mr. **OWENS**. No, sir. I wrote a memorandum to Jack McManus about this incident.

The **CHAIRMAN**. And were you told to vacate the citation?

Mr. **OWENS**. Yes, sir.

The **CHAIRMAN**. And did you do that?

Mr. **OWENS**. No, sir, I did not.

The **CHAIRMAN**. Mr. Goode, did you work closely with the Assistant U.S. Attorney on your investigation?

Mr. **GOODE**. Yes, sir.

The **CHAIRMAN**. And did you have the authority to go directly to the U.S. Attorney's Office with your cases?

Mr. **GOODE**. Yes, sir, I did, with the exception of one case.

The **CHAIRMAN**. And during that period, when the work of your unit was resulting in so many indictments and convictions, was there a growing animosity against you and other special investigators?

Mr. **GOODE**. There was extensive animosity. The inspectors were not allowed to talk to us.

The **CHAIRMAN**. And was this animosity on the part of both the coal companies and your own district officials?

Mr. **GOODE**. We have got what I would refer to as natural animosity from the coal companies; they did not actually appreciate, which I could accept. But the overwhelming harassment coming from the officials in the district, I just could not comprehend it.

The CHAIRMAN. Mr. Goode, did you at one point report what appeared to be criminal conduct on the part of the Sub-District Manager to the Inspector General?

Mr. GOODE. Yes, sir.

The CHAIRMAN. Did the Inspector General investigate the matter?

Mr. GOODE. Yes, he did.

The CHAIRMAN. And was the Sub-District Manager subsequently indicted?

Mr. GOODE. He was indicted and acquitted.

The CHAIRMAN. He was also acquitted.

Did the fact that you were the original source of the information become known to the district officials?

Mr. GOODE. Yes, sir. The administrative report apparently was submitted by the Inspector General's Office, naming me as the informant in the case. This report was given to the district official.

The CHAIRMAN. Mr. Howell, were you threatened during your work as a Special Investigator?

Mr. HOWELL. Yes, I have been.

The CHAIRMAN. And were you, Mr. Owens?

Mr. OWENS. Yes, sir.

The CHAIRMAN. Mr. Goode, did your wife receive anonymous phone calls?

Mr. GOODE. Yes.

The CHAIRMAN. What would the caller say?

Mr. GOODE. Well, that on various occasions, I was out with women; I was being investigated and was going to be fired; things of that nature.

The CHAIRMAN. Were you also investigated by Internal Affairs?

Mr. GOODE. Yes, sir.

The CHAIRMAN. Were any charges ever brought against you?

Mr. GOODE. No, sir.

The CHAIRMAN. Mr. Rife, did a coal company official you were investigating accuse you of soliciting a bribe?

Mr. RIFE. Yes, sir, that is correct.

The CHAIRMAN. And did he say he received a phone call that said you were the only one that could have made it because you were the only one who knew about the investigation?

Mr. RIFE. That is correct, also.

The CHAIRMAN. And were you the only one who knew about the investigation?

Mr. RIFE. No, sir, I was not.

The CHAIRMAN. Who else knew?

Mr. RIFE. There were several people—the Sub-District Manager, the District Manager, Mr. Goode, several other people.

The CHAIRMAN. What did the coal operator say the caller wanted?

Mr. RIFE. Five thousand dollars.

The CHAIRMAN. And had you just incurred heavy medical expenses?

Mr. RIFE. Yes, sir, I had.

The CHAIRMAN. How did you do that?

**Mr. Rife.** I had open heart surgery, or was scheduled to have it right away, and I openly expressed my concern for the financial aspect and whether I would be capable of working again, et cetera. So I was open to it.

**The Chairman.** And were you worried about the medical costs involved?

**Mr. Rife.** Oh, yes, sir.

**The Chairman.** And did you talk about that concern with fellow workers and your district officials?

**Mr. Rife.** Yes, sir.

**The Chairman.** So you were a logical suspect, weren't you?

**Mr. Rife.** That is correct.

**The Chairman.** And did the FBI conduct an investigation?

**Mr. Rife.** Yes, sir, they did.

**The Chairman.** And did you take a polygraph test?

**Mr. Rife.** Yes, sir.

**The Chairman.** And did the coal operator agree to take a polygraph, too?

**Mr. Rife.** Yes, sir, he did.

**The Chairman.** Did he change his mind at the last minute?

**Mr. Rife.** After I took one, yes, sir.

**The Chairman.** Were you cleared by the investigation?

**Mr. Rife.** Yes, sir.

**The Chairman.** Did you solicit a bribe?

**Mr. Rife.** Absolutely not.

**The Chairman.** Have you ever solicited a bribe from anyone?

**Mr. Rife.** No, sir.

**The Chairman.** Mr. Howell, did you begin an investigation of illegal mines in the area?

**Mr. Howell.** Yes, sir.

**The Chairman.** And when was that?

**Mr. Howell.** I think it was sometime in the spring of 1984.

**The Chairman.** What kind of mines were they?

**Mr. Howell.** They were outlaw—what we refer to as illegal mines. They had no permits or licenses by the State or the Federal, no plans, no ventilation devices; they were mining into abandoned mine areas or extracting coal from previously-mined areas of abandoned mines.

**The Chairman.** So they were not safe?

**Mr. Howell.** Definitely not.

**The Chairman.** Who was working in them?

**Mr. Howell.** There were a variety of people working in the mines. There were quite a few of them, approximately 20-plus. They were employing people from kids, 15, 16 years old, maybe even younger, on up to 50- or 60-year-old experienced miners.

**The Chairman.** Were there many young people out there?

**Mr. Howell.** Yes.

**The Chairman.** Did Mr. Goode assist you in this case?

**Mr. Howell.** Yes, he did.

**The Chairman.** And did you obtain enough evidence for a search warrant?

**Mr. Howell.** Yes, we did.

**The Chairman.** Was a grand jury investigation begun?

**Mr. Howell.** Yes, it was.

The **Chairman**. And during the grand jury, was there a letter written to agency headquarters?

Mr. **Howell**. Yes, sir.

The **Chairman**. And can you tell us about the letter?

Mr. **Howell**. The letter was sent to the National Office, and they called up, inquiring about our activities. The letter alleged that we had damaged property, had acted in misconduct. The letter also confessed—the writer confessed to being one of the miners being underground in the illegal mines. So we requested the letter be sent to us as part of our grand jury investigation so we could bring indictments against the writer of the letter for participating in the illegal mining.

The **Chairman**. So did the Assistant U.S. Attorney ask the FBI to conduct the investigation?

Mr. **Howell**. Well, I went out an interviewed the signatory of the letter, and the gentlemen said he did not write the letter. So I took handwriting examples from him, and they came back as negative. When they came back as negative, the gentleman who did the analysis also put in there that this letter had been written on Government stationery. At that time——

The **Chairman**. Wait a minute. The FBI investigated this, and in their investigation they concluded that this letter had been written on Government stationery?

Mr. **Howell**. No, sir. That was discovered in my investigation. When we sent the letter over for analysis against the man who we thought wrote the letter about the illegal mining, they came back and they said he was not the writer of the letter, but for our information that the letter was on Government stationery.

At that time, I gave the information to the U.S. Attorney who invited the FBI to join in the investigation and to determine the writer of the letter because he thought it was somebody from MSHA.

The **Chairman**. And who did the FBI determine had written the letter?

Mr. **Howell**. My understanding is that the letter was written—well, the letter was written by Jack McManus, the subdistrict manager in Richlands, Virginia, a subdistrict of District 5.

The **Chairman**. So the subdistrict manager wrote the letter complaining about your investigation and forged a citizen's signature; is that correct?

Mr. **Howell**. Yes, sir.

The **Chairman**. And this is the letter?

Mr. **Howell**. Yes, sir.

[The letters referred to follows:]

David A. Zegeer
Arlington, Va.

DAZ
9-7-84

COAL MINE HEALTH AND SAFETY
RECEIVED
SEP 7 1984
ADMIN. OFC.
ARLINGTON, VA.
84-00249

Dear Sir;

Recently on the 6 day of August 1984 some of MSHA special Investigators from Norton along with some Russell County Va. deputies swarmed all over [illegible] Creek just like a army. they broke a lock on my Property and cut a chain stretched across Nash Holler leading into property owned by the Willis heirs of which I am one.

I have been geting house Coal off of our property since I had to quit mining job with Island Creek Coal Co. the Investigators illegally tore up my lock and Chain and I would like for you to investigate their actions like they would be in the Coal mines where people are getting hurt and killed. I had 25 years experience in mines and I know how to act [illegible] and take care of myself. We need the Coal to Carry us through the winter and the smart aleck Investigators [illegible]

Red tags all over our property and threatened me if i hauled any coal off my own property. I have put another chain across the road in top end of Deep Holler I would appreciate if they would leave it alone.

The reason I know who broke the lock and chain was the deputy sheriff who lives down the road from me did he witness a MSHA man do it. after the red tags were put up. they let the Knox Creek Coal Surveyor go in the dog holes, if in it was as dangerous why did they let them go in.

Please investigate and let me know if I can legal get my coal off my own property.

My Name is:
Jessie [illegible] Wells
[illegible], Va. VA
Phone No 923-[illegible]

To Mr. W.
Sheridan
3/6
(on list)

SEP 2 4 1984

Mr. Jessie W. Wells
West Raven, Virginia 24639

Dear Mr. Wells:

This is in response to your recent letter regarding the Mine Safety and Health Administration's (MSHA) participation in an investigation of allegedly illegal mining operations in Russell County, Virginia.

On August 1, 1984, the matter was referred directly to a United States Attorney in Roanoke, Virginia, for further investigation and possible prosecution. Therefore, any further commentary on the subject by MSHA would be inappropriate at this time.

We realize that this response may not fully satisfy your concerns; however, due to the involvement of the United States Attorney's office, we are unable to elaborate further at this time.

Sincerely,

David A. Zegeer
Assistant Secretary for
Mine Safety and Health

The CHAIRMAN. Was this the same subdistrict manager who had been indicted and acquitted of the earlier charges?

Mr. HOWELL. Yes, sir.

The CHAIRMAN. Were the illegal mine operators convicted?

Mr. HOWELL. Yes, sir.

The CHAIRMAN. Mr. Rife, were you at the agency academy at Berkley at that time?

Mr. RIFE. At the time of the . . .

The CHAIRMAN. Yes, at the time of the conviction.

Mr. RIFE. No, sir. When that investigation was ongoing, I was in Glenco at that time.

The CHAIRMAN. I see.

Did you hear a new district manager was coming to District 5?

Mr. RIFE. Yes, sir.

The CHAIRMAN. And what was said?

Mr. RIFE. That the new district manager that was being sent to District 5 was going to take care of Al Goode.

The CHAIRMAN. Take care of your group?

Mr. RIFE. Of Al Goode.

The CHAIRMAN. Mr. Goode. Now, who was that? Who was the district manager that was sent?

Mr. RIFE. Mr. Ken Howard was eventually sent out. At that time I did not know who it was going to be.

The CHAIRMAN. I see. All right.

Now, did he call you in? Did he call you all in?

Mr. RIFE. Yes, sir.

The CHAIRMAN. All into his office?

Mr. RIFE. That is correct.

The CHAIRMAN. And what did Mr. Howard say at the meeting, Mr. Rife?

Mr. RIFE. He passed out a paper that he had stuff written on of how we as special investigators were perceived in District 5.

The CHAIRMAN. Did you resent it?

Mr. RIFE. Yes, sir, I did.

The CHAIRMAN. What about you? Did you resent it, too, Mr. Owens?

Mr. OWENS. Yes, sir.

The CHAIRMAN. And, Mr. Rife, you resented it, too?

Mr. RIFE. Yes, sir.

The CHAIRMAN. Now, Mr. Goode, did the district manager take away your authority over the other men?

Mr. GOODE. Yes, sir. He removed me as supervisor and placed the investigators under the two subdistrict managers, which ironically at the time were under FBI investigation.

The CHAIRMAN. Did he give any reason?

Mr. GOODE. He said the perception in the district against me was so intense that he needed to make the subdistrict managers more responsible for the actions of investigations.

The CHAIRMAN. So you were put under the supervision of the subdistrict manager.

Mr. GOODE. No. The investigators were. I was placed under the supervision of the district manager, field.

The CHAIRMAN. Now, was this at the same time the investigation was being conducted by the FBI concerning the letter that allegedly had been written by the subdistrict manager in the illegal mines case?

Mr. GOODE. Yes, sir, it was.

The CHAIRMAN. So did you object?

Mr. GOODE. Yes, sir. I objected strenuously.

The CHAIRMAN. Was the subdistrict manager subsequently transferred?

Mr. GOODE. Yes, sir, he was.

The CHAIRMAN. And, Mr. Goode, were you subsequently transferred to the Arlington headquarters?

Mr. GOODE. Yes, sir, I was.

The CHAIRMAN. Were you told that it was a critical position for the program and that your qualifications and experience were required for the position?

Mr. GOODE. The letter so stated.

The CHAIRMAN. Well, since you have been at headquarters, have your qualifications and experience been utilized at all?

Mr. GOODE. No, sir.

The CHAIRMAN. Mr. Howell, why do you think the unit was broken up when Mr. Goode was transferred?

Mr. HOWELL. I think that the unit was broken up, or Mr. Goode was removed, because the perception problem in District 5, as perceived by the district manager when he came there, after talking to two or three people who resented the fact that we had been effective within the district.

The CHAIRMAN. How about you, Mr. Owens? What did you think?

Mr. OWENS. Sir, I agree with Mr. Howell that I think the district manager had a preconceived notion about the unit and that he only talked to two or three key people. Then he made statements to the effect that the special investigative program was useless and ineffective.

Pertaining to this, I did file a complaint that was sent through the National Labor Relations Board pertaining to this subject, and I also made my own unofficial inquiry into this matter because, at the time, this sounded so far out that there was no way I could believe that the majority of our people felt this way.

I would like to say, Senator, that not any of the people that I talked to informed me or told me that the district manager had even spoken to them about this matter.

The CHAIRMAN. Now, since the special investigations unit was broken up, what has happened to the number of criminal investigations? Do you know, Mr. Goode?

Mr. GOODE. They declined sharply, sir.

The CHAIRMAN. Pardon?

Mr. GOODE. They have declined sharply.

The CHAIRMAN. Well, I will include in the record the numbers in your district from 1981 until now. As we have heard, it has gone in 1981 from 15, 20, 19, 19, 7, now 3 in 1986, and the first quarter of 1987 is down to one.

Mr. GOODE. Yes, sir.

[Information supplied for the record follows:]

The Federal Mine Safety and Health Act of 1977 provides for criminal penalties against mine operators for "knowing and willful" violations of safety and health standards. Agents of corporate operators also may be subject to civil and/or criminal penalties for such violations.

The following is a summary of Section 110 investigations initiated by each CMS&H District for specific fiscal years:

| District | FY '81 | FY '82 | FY '83 | FY '84 | FY '85 | FY '86 | FY '87 (1st Qtr) |
|---|---|---|---|---|---|---|---|
| Wilkes-Barre | 0 | 0 | 0 | 1 | 0 | 1 | 0 |
| Pittsburgh | 11 | 7 | 6 | 7 | 12 | 4 | 1 |
| Morgantown | 20 | 19 | 19 | 16 | 5 | 13 | 3 |
| Mt. Hope | 6 | 14 | 8 | 3 | 7 | 2 | 1 |
| Norton | 15 | 20 | 19 | 19 | 7 | 3 | 1 |
| Pikeville | 7 | 5 | 3 | 5 | 1 | 0 | 0 |
| Barbourville | 9 | 5 | 2 | 3 | 8 | 1 | 1 |
| Vincennes | 6 | 11 | 3 | 4 | 11 | 0 | 1 |
| Denver | 0 | 2 | 2 | 1 | 3 | 0 | 0 |
| Madisonville | 17 | 3 | 3 | 2 | 2 | 1 | 1 |
| National Totals | 91 | 86 | 65 | 61 | 56 | 25 | 9 |

The CHAIRMAN. That has been the most active unit in the country, had by far the best record in terms of the convictions of serious charges affecting the safety and the health of the miners in that very important district; and now that whole unit, which had served the people there so well, has been transferred. The results are, I think, quite clear and quite evident from this report; that is, they are just down to virtually nothing.

We inquired of the Department of Justice prior to this hearing, and they said for the record they have a high regard for Mr. Goode, and the work he did in District 5. The investigators who worked with Mr. Goode said his performance was excellent.

Mr. Goode, do you think that the investigations of fatal accidents and these criminal investigations should be a separate entity outside of MSHA?

Mr. GOODE. I have a little problem about what a separate entity might be. If we are referring to the Inspector General's office, no, sir.

I do agree that investigations do need to be removed from regulatory functions in MSHA, most definitely. All investigative functions should not be handled by anyone that does inspections. They should be removed. Ideally, if a separate entity could do it, yes.

The CHAIRMAN. Okay. Just our final witness here. Mr. Beason, we welcome you here. What is your present position?

Mr. BEASON. I am a metal/nonmetal mine inspector.

The CHAIRMAN. Get closer to that microphone, if you would, please.

Mr. BEASON. I am a metal and non-metal mine inspector out of Moab, Utah.

The CHAIRMAN. And how long have you worked for the agency?

Mr. BEASON. Thirteen years.

The CHAIRMAN. And in 1977 did you inspect a salt mine in Belle Isle, Louisiana?

Mr. BEASON. Yes, sir.

The CHAIRMAN. And what did you discover during that inspection?

Mr. BEASON. I discovered blow-outs of concluded salt with methane in it. I discovered methane coming out of the floors in that mine.

The CHAIRMAN. Did you issue a closure order at the time?

Mr. BEASON. Yes, sir. I issued ten closure orders during that day, noncompliance and some on NO2; this particular place was on methane.

The CHAIRMAN. And did the company correct the problem?

Mr. BEASON. They moved a ventilation fan in. It was 250 feet to the face, and there was about a 20 diameter pocket of methane blowing out of there. And they did not have any ventilation in that face. So when they moved the ventilation to the face, it diluted it.

The CHAIRMAN. And, Mr. Beason, when you returned to your office, did you see your supervisor and your subdistrict manager?

Mr. BEASON. Yes, sir. I took cricket samples. And when I got to the field office, which was the subdistrict office, the supervisors had been told by the company of the order, and that I had told them I was going to recommend that they be a gassy mine.

[Information supplied for the record follows:]

3-22-77

To Harry Schell
Hugh Hitcham
Joe Kennedy,

Subject Gas, Methane - Belle Isle Mine

From Ronald L Bacon

During our inspection we found Methane in several headings, The ~~concentrations of Methane were~~ at levels that could not be considered dangerous.

On Tuesday 15 at 1030
On 7 main East 13 face we found .10 four ft. from the back four ft. from the face and four ft from the left rib where we took a [illegible] sample. Up next to the back in a small pocket the methane content was .80
(See sketch)
The face was shut evening shift Friday 11, so the heading was not ventilated.

On wensday 16 - 10:30 in 9 main East methane was bubbling from the floor in and area about 20ft in diameter, ~~That~~ Taking a sample over the pocket within 6 inches of the floor with the Methen the needle went the full scale.

Above the area was a hole where an ignion or gas pressure blow a hole. A methometer reading was taken in the face and a Cricket sample taken,

Another was taken about the gas leak but gas was not detected,

3-22-77

To Harry Schel,
Hugh Graham
Doc Kennedy.
Subject, Gas - Belle Isle mine.

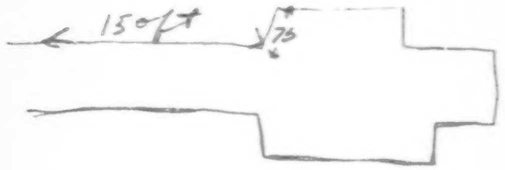
From. [illegible] BENSON.

During our inspection at the Belle Isle Mine we found two headings that had contents of gas. The concentrations of gas were at levels that could not be considered dangerous but the attitude of the company toward the gas is extremely dangerous.

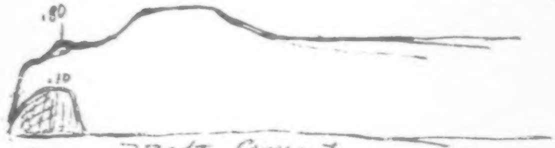
1- The Gas Measurement gas was hit three weeks before. A fan had not been put to remove the gas.

2- The heading [illegible] gas was escaping from the floor and when I check with the Methometer it pulled to the red.

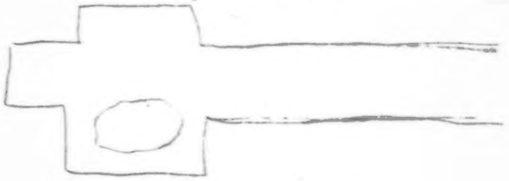
8 Main East Methane .20



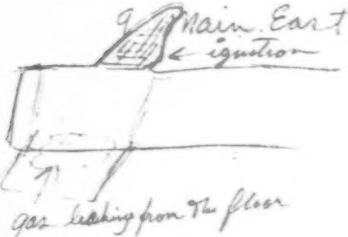
7- Main East 13
230- Center Crosscut. Shot friday - Tuesday 10:30)



230 ft. Crosscut

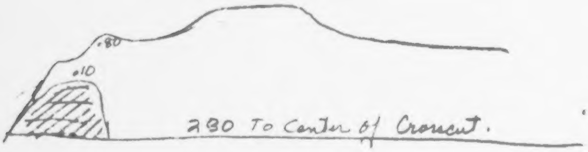


9 Main East

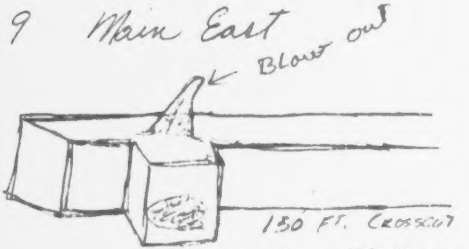


gas leaking from the floor

7 Main East 13


.80
.10
230 To Center of Crosscut.

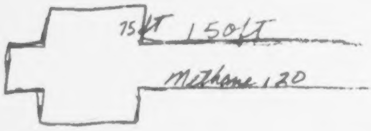
9 Main East


Blow out
130 FT. Crosscut

No Aux. Vent.

Gas pocket Methane Read in excess of 5%

6 Main East


75 FT
150 FT
Methane 1.20

Not To Scale All measurements provided by the company.

Cargill, Inc.

Belle Isle Mine

9 Main East 12067
Center face 5ft from the back
3-16-77 — 10:30 AM.

6 Main East 12064
Center Drift 10ft face 10ft back
3-16-77- 2:10 P.M.

12066
6 Main East

12065
6 Main East 15
Center drift 3ft from face 5ft back
3-16-77 - 10:AM

12062
6 Main East 15 North
10ft Right rib 4ft. back 10ft from face
3-15-77 2:00 pm.

12063
7 Main East 13
6ft. left rib 4ft. back 4ft face
230ft from the entry
3-15-77 - 10:15

12060

7 Main East 15 South
10 ft back 6 ft face Center drift
3-15-77- 2:35

12061
6 Main East Center face 4 ft face 5 ft high

3-15-77 - 2:10 - pm

4000—2
(Aug. 1974)
Cargill, Inc.
88 3-21-77

**United States Department of the Interior**
**Mining Enforcement and Safety Administration**

1100 Commerce Street
Room 4C50
Dallas, Texas 75202

Mine I.D.: 16-00246
Mine Name: Belle Isle Mine
Mine Address: Franklin
Louisiana

Date: 3-15 19 77 Time: 10:40

This ORDER Number 195 is issued under authority Pursuant to the Federal Metal and Nonmetallic Mine Safety Act (80 Stat. 772, 30 U.S.C. 72). You are hereby ORDERED to cause all persons except those persons described in Secs. 8 (a) - (1) and (b) (1) of the Act to be withdrawn from, and to be debarred from, entering the area of the mine described below.

☑ Imminent Danger Standard Number (if applicable) 60-5

☐ Failure to Comply with NOTICE Number ______ Issued (Date) ______

Description of Condition: Methane was detected in 7 Main East 13 and ventilation was not adjusted to remove gas

Area of Mine Affected: 7 Main East 13

Inspector's Signature Ronald L Benson Printed Name Ronald L Benson DAR No. 279

Inspector's Copy

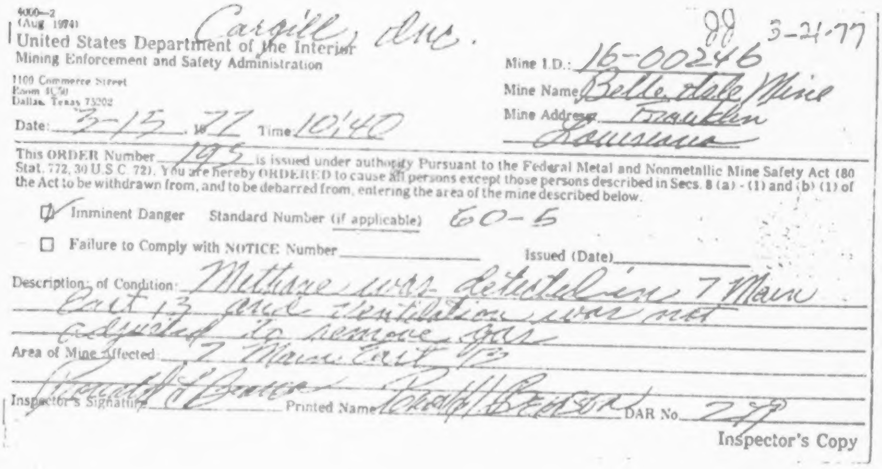
INSPECTOR'S ACTION

This ORDER is

☑ Abated Inspector's Signature Ronald L Benson Printed Name Ronald Benson DAR No. 279 Date 3-16-77

☐ Withdrawn Inspector's Signature ______ Printed Name ______ DAR No ______ Date ______

Remarks Ventilation line were installed and the gas removed.



4000—2
(Aug 1974)
Cargill, Inc.
88 3-21-77

United States Department of the Interior
Mining Enforcement and Safety Administration
1100 Commerce Street
Room 4C50
Dallas, Texas 75202

Date: 3-15 1977 Time 10:40

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☑ Imminent Danger Standard Number (if applicable) 60-5

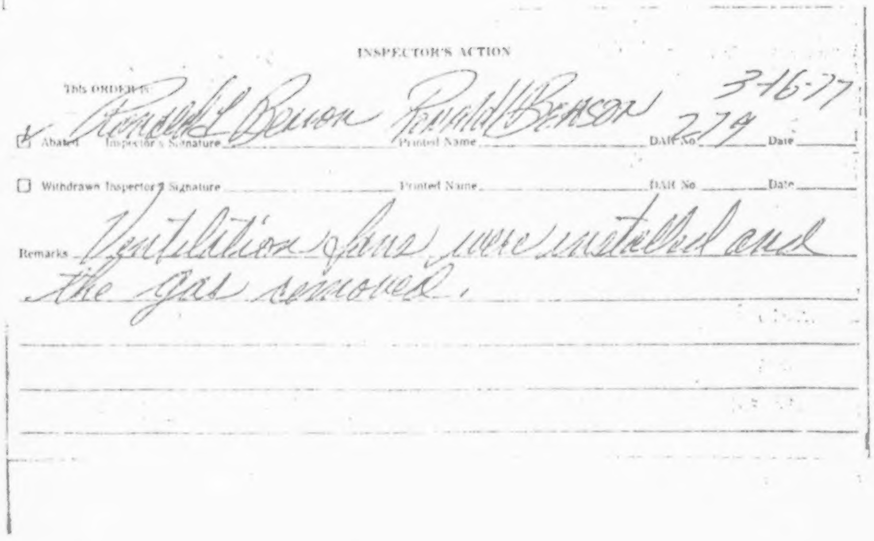
☐ Failure to Comply with NOTICE Number ______ Issued (Date) ______

Description of Condition: Methane was detected in 7 Main East 13 and ventilation was not adjusted to remove gas

Area of Mine Affected: 7 Main East 13

Inspector's Signature Ronald L. Benson Printed Name Ronald L. Benson DAR No. 279

Inspector's Copy



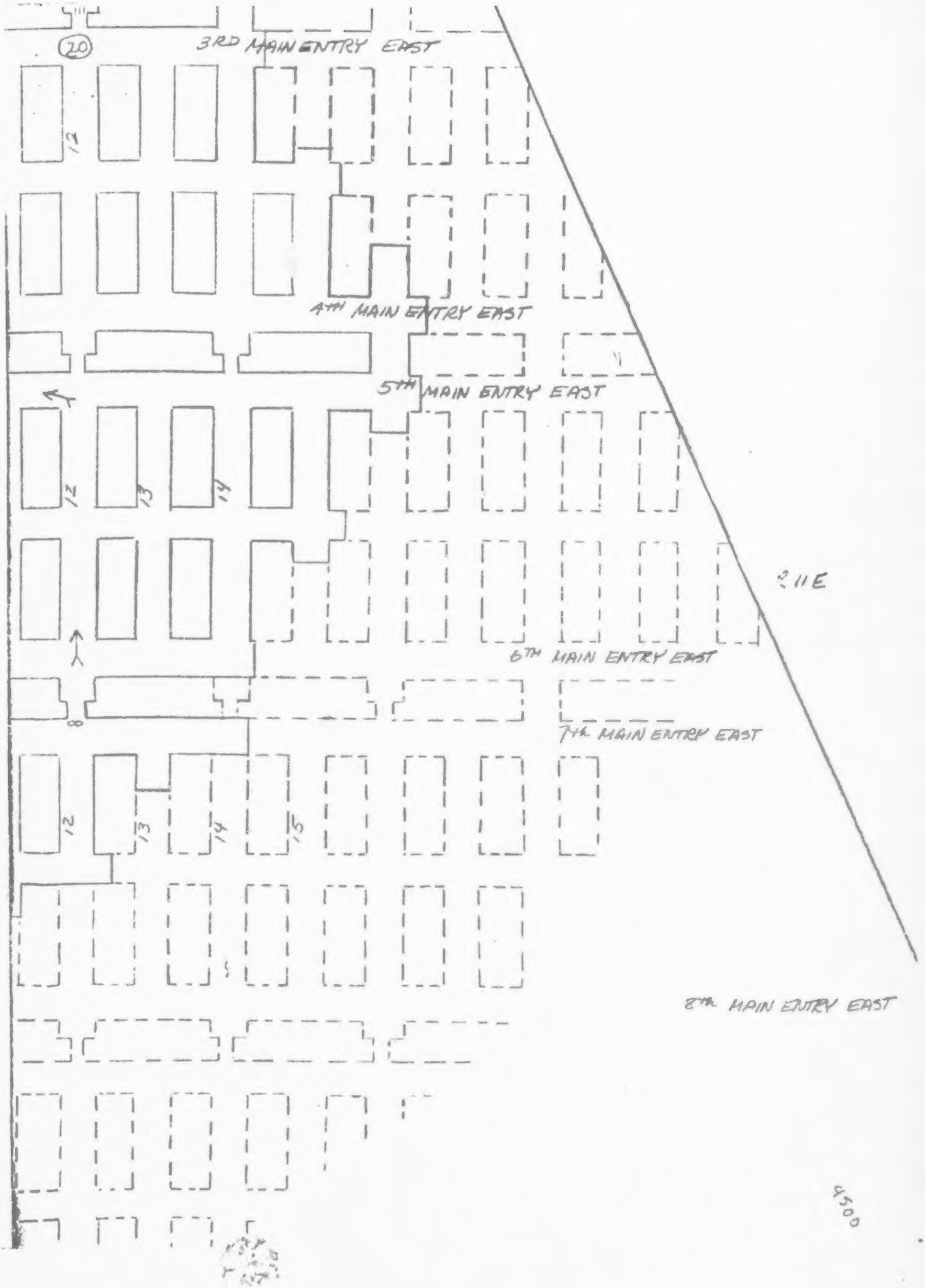
INSPECTOR'S ACTION

This ORDER is:

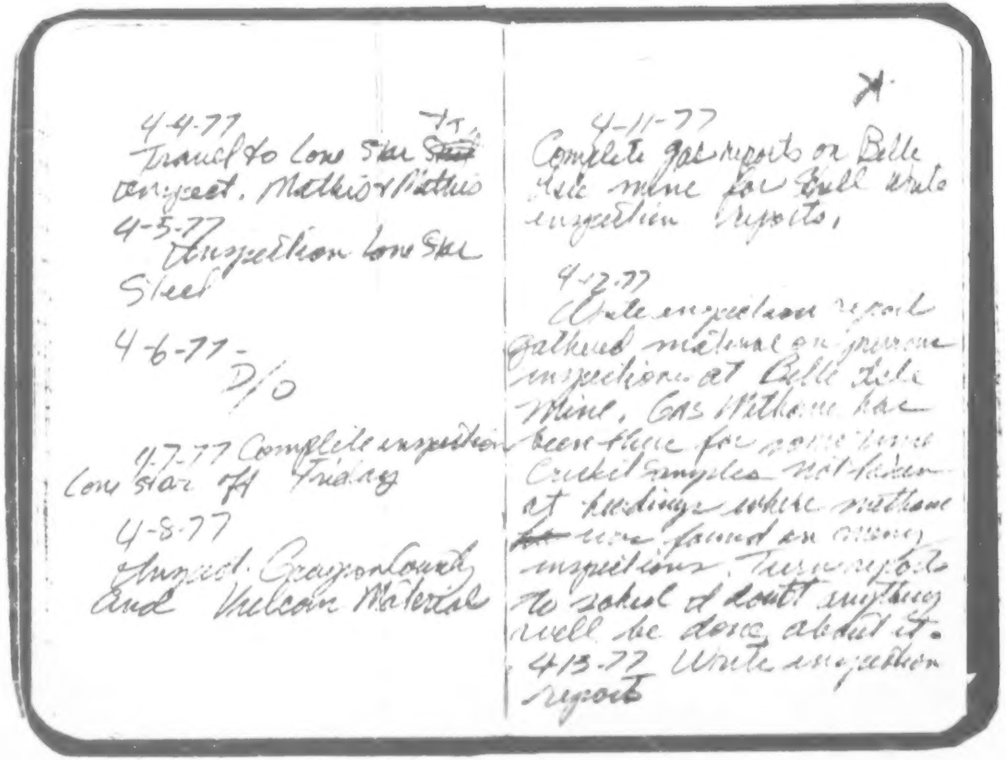
☑ Abated Inspector's Signature Ronald L. Benson Printed Name Ronald L. Benson DAR No. 279 Date 3-16-77

☐ Withdrawn Inspector's Signature ______ Printed Name ______ DAR No. ______ Date ______

Remarks Ventilation fans were installed and the gas removed.


20
3RD MAIN ENTRY EAST
12
4TH MAIN ENTRY EAST
5TH MAIN ENTRY EAST
12
13
14
2 11 E
6TH MAIN ENTRY EAST
7th MAIN ENTRY EAST
12
13
14
15
8TH MAIN ENTRY EAST

4500



4-4-77 TT

Travel to Lone Star ~~Stee~~
Inspect. Mathis & Mathis
4-5-77
Inspection Lone Star
Steel

4-6-77 -
D/O

4-7-77 Complete inspection
Lone Star TH Friday
4-8-77
Inspect. Grayson County
and Vulcan Material

*

4-11-77
Complete gas reports on Belle
Isle mine for Bill White
inspection reports,

4-12-77
Write inspection report
gathered material on previous
inspections at Belle Isle
Mine, Gas Methane has
been there for some time
Cricket samples not taken
at headings where methane
~~has~~ were found on many
inspections. These reports
to school I don't anything
will be done about it.
4-13-77 Write inspection
reports

Beason

## TABLE 1 - ANALYSES OF AIR SAMPLES COLLECTED

MINE ID ________

MINE/MILL Belle Isle  COMPANY Cargill, Inc. 12060-12067  STATE LA

COLLECTED BY R.L. Beason  SUBDISTRICT OFFICE Dallas, TX  DATE REC'D 3-23-77

| BOTTLE NUMBER | LAB NUMBER | LOCATION IN MINE | DATE AND TIME | CARBON DIOXIDE | OXYGEN | METHANE | CARBON MONOXIDE | |
|---|---|---|---|---|---|---|---|---|
| 12060 | G7-0766 | 7 main east 15 south 10' back 6' face center drift | 3-15-77 2:55 | .08 | 20.81 | .09 | .0006 | |
| 12061 | G7-0767 | 6 main east center face 4 ft face 5' high | 3-15-77 2:10pm | .08 | 20.82 | .22 | .0000 | |
| 12062 | G7-0768 | 6 main east 15 north 10' right rib 4' back, 10' face | 3-15-77 2:00pm | .09 | 20.85 | .23 | .0000 | |
| 12063 | G7-0769 | 7 main east 13-6' left rib, 4' fack 230' center | 3-15-77 10:15 | .10 | 20.80 | .10 | .0000 | |
| 12064 | G7-0770 | 6 main east center drift 10' face, 10' back | 3-16-77 2:10 | .23 | 20.64 | .16 | .0032 | |
| 12065 | G7-0771 | 6 main east 15 center drift 3' face, 5' back | 3-16-77 10:00am | .11 | 20.78 | .30 | .0001 | |
| 12066 | G7-0772 | 6 main east | 3-16-77 10:10am | .08 | 20.80 | .23 | .0010 | |
| 12067 | G7-0773 | 9 main east center face 5' back | 3-16-77 10:30 | .20 | 20.67 | .15 | .0032 | |

INFORMED DALLAS OFFICE BY PHONE 3:00pm, 3-24-77, OF ANALYTICAL RESULTS.

TABLE 1 - ANALYSES OF AIR SAMPLES COLLECTED 7/12-16/76

MINE/MILL Belle Isle COMPANY Cargill, Inc. STATE Louisiana

COLLECTED BY P.W. Kleinstiver, J.W. Durfee SUBDISTRICT OFFICE Dallas, TX DATE REC'D 7-26-76

| BOTTLE NUMBER | LAB NUMBER | LOCATION IN MINE | DATE AND TIME | CARBON DIOXIDE | OXYGEN | METHANE | CARBON MONOXIDE | |
|---|---|---|---|---|---|---|---|---|
| 10254 | G6-2576 | 8 Main East - 4, 19 in from back, 45 ft from face middle of 80 ft width | 7-14-76<br>11:20am | .06 | 20.91 | .00 | .0000 | |
| 10262 | G6-2577 | Exhaust Air | 7-13-76<br>:25pm | .05 | 20.93 | .00 | .0000 | |

Millometer readings CO sample type

6 main west .08
7 Main West .05
Air entry South .05
8 Main South .03
8 main East R4 .02
8 Main East R10 0
Bottom of Shaft 0

COPY

ED)

TABLE 1 - ANALYSES OF AIR SAMPLES COLLECTED 8/3,12/76

MINE/MILL Belle Isle Mine COMPANY Cargill, Inc. STATE Louisiana

COLLECTED BY Sidney R. Kirk, Jacobson, D.K. Morris SUBDISTRICT OFFICE Dallas, TX DATE REC'D 8-17-76

| BOTTLE NUMBER | LAB NUMBER | LOCATION IN MINE | DATE AND TIME | CARBON DIOXIDE | OXYGEN | METHANE | CARBON MONOXIDE | |
|---|---|---|---|---|---|---|---|---|
| 10448 | G6-2874 | No.14 timber set in No.1 shaft, W. Comp. Exh. Vent | 8-11-76 12:50pm | .04 | 20.93 | .00 | .0000 | |
| 10376 | G6-2875 | 0 Main east room 7 31 ft from left rib 5' above floor | 8-11-76 3:08pm | .09 | 20.83 | .03 | .0007 | |
| 1602 | G6-2876 | 7 Main East Room x 30' from rib 5' above floor | 8-11-76 3:08pm | .07 | 20.87 | .03 | .0004 | |
| 8509 | G6-2877 | 2 main So. at entrance to tunnel lower level | 8-10-76 6:00pm | .09 | 20.83 | .03 | .0006 | |
| 10433 | G6-2878 | Main Rtn. 1st corner East of shaft | 8-10-76 [illegible]:35pm | .08 | 20.84 | .03 | .0006 | |

COPY

TABLE 1 - ANALYSES OF AIR SAMPLES COLLECTED 8/3,12/76

MINE/MILL Belle Isle Mine COMPANY Cargill, Inc. STATE Louisiana

COLLECTED BY Sidney R. Kirk, Jacobson, D.K. Morris SUBDISTRICT OFFICE Dallas, TX DATE REC'D 8-17-76

| BOTTLE NUMBER | LAB NUMBER | LOCATION IN MINE | DATE AND TIME | CARBON DIOXIDE | OXYGEN | METHANE | CARBON MONOXIDE | |
|---|---|---|---|---|---|---|---|---|
| 8517 | G6-2866 | 1st main south at dump hopper | 8-3-76<br>8:10pm | .06 | 20.90 | .01 | .0002 | |
| 8546 | G6-2867 | Face of M. East No.4 | 8-3-76<br>9:10pm | .04 | 20.93 | .00 | .0000 | |
| 10469 | G6-2868 | 9 M.E. Face 33 ft from rib, 4 ft. from floor | 8-4-76<br>2:50pm | .12 | 20.77 | .06 | .0011 | |
| 8571 | G6-2869 | 8 ME-4 face 17' from left rib-4' from floor | 8-4-76<br>3:00pm | .17 | 20.73 | .04 | .0014 | |
| 10456 | G6-2870 | 8ME, 6 face 18' from right rib, 5' from floor | 8-4-76<br>3:08pm | .11 | 20.79 | .04 | .0010 | |
| 8504 | G6-2871 | Air entry at 7 ME-W 13' from left rib, 4' from floor | 8-4-76<br>3:15pm | .04 | 20.93 | .00 | .0000 | |
| 10447 | G6-2872 | 4 ft from floor and 26 ft from rib at upper level dump | 8-4-76<br>2:25pm | .08 | 20.85 | .03 | .0009 | |
| 6246 | G6-2873 | Shop area 2nd main south | 8-11-76<br>1:45pm | .08 | 20.88 | .01 | .0000 | |

DATE 8-19-76 SIGNED Fred C.

TABLE 1 - ANALYSES OF AIR SAMPLES COLLECTED 2/15-17/77 MINE ID

MINE/MILL Belle Isle Mine COMPANY Cargill Inc. STATE Louisiana

COLLECTED BY H. W. Patterson SUBDISTRICT OFFICE Dallas DATE REC'D 2-28-77

| BOTTLE NUMBER | LAB NUMBER | LOCATION IN MINE | DATE AND TIME | CARBON DIOXIDE | OXYGEN | METHANE | CARBON MONOXIDE |
|---|---|---|---|---|---|---|---|
| 1844 | G7-0499 | exhaust upcast shaft | 2-15-77<br>11:00AM | .04 | 20.92 | .00 | .0000 |
| 1847 | G7-0500 | 6 main east | 2-16-77<br>1:35PM | .14 | 20.76 | .11 | .0013 |
| 336 | G7-0501 | TME<br>1 M East | 2-17-77<br>12:00noon | .13 | 20.75 | .14 | 0012 |

COPY

TABLE 1 - ANALYSES OF AIR SAMPLES COLLECTED 1/18-20/77

~~MINE~~/MILL Belle Isle Mine COMPANY Cargill Inc STATE LA

COLLECTED BY Patterson, Jacobson SUBDISTRICT OFFICE Dallas, TX DATE REC'D 1/28/77

| BOTTLE NUMBER | LAB NUMBER | LOCATION IN MINE | DATE AND TIME | CARBON DIOXIDE | OXYGEN | METHANE | CARBON MONOXIDE |
|---|---|---|---|---|---|---|---|
| 11437 | G7-0209 | 7 main E | 1/19/77 10:20am | .06 | 20.89 | .05 | .0000 |
| 11438 | G7-0210 | 6 main E | 1/19/77 10:10am | .08 | 20.85 | .18 | .0000 |
| 11439 | G7-0211 | main lift upper level | 1/18/77 10:50am | .07 | 20.90 | .02 | .0000 |
| 11434 | G7-0212 | 5 main east | 1/20/77 11:52am | .08 | 20.88 | .03 | .0000 |
| 11436 | G7-0213 | upcast air in No. 1 shaft | 1/20/77 12:20 | .06 | 20.89 | .02 | .0000 |

DATE 1/31/77 SIGNED Fred C. Ryan
Denver Technical Support Center

TABLE 1 - ANALYSES OF AIR SAMPLES COLLECTED 12/14 - 15/76

INE/HILL Belle Isle Mine COMPANY Cargill, Inc. STATE LA

OLLECTED BY H. Yount SUBDISTRICT OFFICE Dallas DATE REC'D 12-22-76

| OTTLE UMBER | LAB NUMBER | LOCATION IN MINE | DATE AND TIME | CARBON DIOXIDE | OXYGEN | METHANE | CARBON MONOXIDE | |
|---|---|---|---|---|---|---|---|---|
| 529 | G6-4172 | screening plant | 12-14-76 10:20 a.m. | .09 | 20.85 | .01 | .0006 | |
| 526 | G6-4173 | No. 1 Shaft | 12-14-76 9:30 | .07 | 20.87 | .02 | .0003 | |
| 9803 | G6-4174 | 3rd main east - Rm. 11 | 12-14-76 2:30p.m | .14 | 20.79 | .03 | .0008 | |
| 0535 | G6-4175 | 7th main east - Rm. 13 | 12-14-76 11:10a.m | .04 | 20.92 | .00 | .0003 | |
| 7239 | G6-4176 | No. 1 shaft set No. 14 12" above leak | 12-15-76 8:45a.m | .08 | 20.88 | .02 | .0004 | |
| 7228 | G6-4177 | No. 1 shaft set No. 10 12" above leak | 12-15-76 8:45p.m | .08 | 20.85 | .02 | .0005 | |

## TABLE 1 - ANALYSES OF AIR SAMPLES COLLECTED *11/16-18/76*

MINE/MILL *Belle Isle Mine* COMPANY *Cargill, Inc.* STATE *Louisiana*

COLLECTED BY *H.W. Patterson* SUBDISTRICT OFFICE *Dallas, TX* DATE REC'D *11-23-76*

| BOTTLE NUMBER | LAB NUMBER | LOCATION IN MINE | DATE AND TIME | CARBON DIOXIDE | OXYGEN | METHANE | CARBON MONOXIDE |
|---|---|---|---|---|---|---|---|
| *10578* | *G6-3880* | *8ME8 Center Room (Drilling)* | *11-17-76 10:00am* | *.13* | *20.82* | *.03* | *.0006* |
| *10589* | *G6-3881* | *Mine level upcast air* | *11-16-76 3:47pm* | *.07* | *20.89* | *.01* | *.0002* |
| *10580* | *G6-3882* | *25 ft from w/w 4' high 1 ft from face 8ME10* | *11-17-76 10:20am* | *.13* | *20.85* | *.03* | *.0011* |
| *10819* | *G6-3883* | *End 6 main west* | *11-16-76 2:00pm* | *.04* | *20.91* | *.04* | *.0000* |
| *20065* | *G6-3884* | *Between 11 & 12 set below concrete in main shaft water leak* | *11-17-76 9:20am* | *.07* | *20.90* | *.01* | *.0003* |

COPY

### TABLE 1 - ANALYSES OF AIR SAMPLES COLLECTED 10/19-20/76

MINE/MILL Belle Isle Mine COMPANY Cargill, Inc. STATE LA

COLLECTED BY Harold R. Yount SUBDISTRICT OFFICE Dallas, TX DATE REC'D 10-28-76

| BOTTLE NUMBER | LAB NUMBER | LOCATION IN MINE | DATE AND TIME | CARBON DIOXIDE | OXYGEN | METHANE | CARBON MONOXIDE | |
|---|---|---|---|---|---|---|---|---|
| 1686 | G6-3652 | Screening Area | 10-19-76<br>1:00pm | .10 | 20.80 | .03 | .0009 | |
| 10365 | G6-3653 | Exhaust air shaft | 10-19-76<br>12:20pm | .11 | 20.78 | .03 | .0008 | |
| 1613 | G6-3654 | U.G. Shop | 10-19-76<br>1:45pm | .05 | 20.89 | .01 | .0002 | |
| 6243 | G6-3655 | In shaft at water leak | 10-19-76<br>11:00am | N.D.* | 20.72 | .00 | .0005 | |
| 10354 | G6-3656 | Primary Crusher | 10-20-76<br>1465 | .09 | 20.82 | .02 | .0006 | |
| 8525 | G6-3657 | 9 N.E. 6 West | 10-20-76<br>11:30am | .10 | 20.80 | .03 | .0016 | |

*NOT DETECTED - CONTAINER SEALED OK WHEN RECEIVED

COPY

MINE/MILL Belle Isle COMPANY Cargill, Inc. STATE LA

COLLECTED BY J.R. Harju SUBDISTRICT OFFICE Dallas, TX DATE REC'D 6-21-76

| BOTTLE NUMBER | LAB NUMBER | LOCATION IN MINE | DATE AND TIME | CARBON DIOXIDE | OXYGEN | METHANE | CARBON MONOXIDE | |
|---|---|---|---|---|---|---|---|---|
| 10259 | G6-2222 | #1 shaft - Ttn | 6-15-76<br>3:30pm | .08 | 20.85 | .05 | .0007 | |
| 10249 | G6-2223 | F-5 ME-2 | 6-16-76<br>11:55 | .14 | 20.78 | .05 | .0012 | |
| 10250 | G6-2224 | 9 Main East 1 MS | 6-15-76<br>2:34pm | .05 | 20.92 | .00 | .0000 | |
| 10251 | G6-2225 | 8 Main East 4 | 6-15-76<br>2:20pm | .08 | 20.85 | .04 | .0006 | |
| 10263 | G6-2226 | 8 Main East Room 8 | 6-15-76<br>2:10pm | .05 | 20.93 | .01 | .0000 | |

COPY

DATE 6-23-76 SIGNED Fred C. Ryan
Denver Technical Support Center

The Chairman. Now, Mr. Beason, is there anything going on today in the metal/nonmetal arm of MSHA which threatens the lives of miners?

Mr. Beason. Something going on today?

The Chairman. Yes—You were here earlier in the course of our hearing. We were talking about the rewrite of regulations, and we found that professional, competent people who knew this subject well believed that the alterations and changes were a direct threat to the lives of coal miners.

Mr. Beason. Yes, sir.

The Chairman. We are just asking you whether you believe there are similar kinds of conduct which threaten the lives of other miners.

Mr. Beason. Yes, sir, there is.

The Chairman. And were you assigned to a Safety Standards Committee charged with rewriting the safety standard regulations?

Mr. Beason. Yes, sir, I was with the Gassy Standard Committee for eight years.

The Chairman. And was that the committee charged with rewriting all the regulations?

Mr. Beason. For the last four years, yes, sir.

The Chairman. And did the Safety Standards Committee attempt to upgrade the safety standards for gassy mines?

Mr. Beason. Yes, sir, they did.

The Chairman. And was it a good committee?

Mr. Beason. Yes, sir. We had some very good people. I was real proud to be a part of it.

The original committee chairman retired around 1985.

The Office of Standards and Regulations placed a committee chairman over the committee that did not have any experience in gassy mines, never worked or inspected a gassy mine—and as far as I know never had any formal training in gassy mines.

The Chairman. And was a final product submitted to MSHA with recommendations for regulatory changes?

Mr. Beason. The proposed standards were submitted in 1984, I think.

The Chairman. And what is happening to that product now?

Mr. Beason. Well, when I was asked to do the cost of the standards, and I was working on 927 in 1984—I was working on the crosscut intervals that we were requiring and the cost to comply with that standard—a gentleman came in and said, "Why are you working on that? Those have been taken out."

And I showed him my copy of what we had issued and told him, "No. Here they are." So I continued to work on it.

The next day he came back and he said, "Now, I told you that they took those out, and Mr. Kincaid got hold of your chairman, and they had taken those standards out. So you are wasting your time."

The Chairman. Was this the first time you heard about the standard being deleted?

Mr. Beason. Yes, sir.

The Chairman. And did anyone else on the committee know the standard was being deleted?

Mr. Beason. Not that I know of.

The **Chairman**. What is the danger of not having the regulation?

Mr. **Beason**. Well, the danger is—and I wrote a letter to Zieger about the dangers, and they referred to the other standards, nongassy standards, and claimed that the other standards would cover for this one, so it was not necessary. But in that standard that they are referring to that would cover it, it says a second escapeway is recommended, but not required during the exploration or development of an ore body.

So in other words, as long as they are developing this mine or this ore body, even if it is a gassy one, they do not have to have a second escapeway. Therefore, they do not have to have the crosscuts. There is another part in here that says that you have to have an escapeway—when they go into production.

The **Chairman**. Well, so that means you cannot get out of the mine if there is some kind of a blowout.

Mr. **Beason**. Yes, sir, and your restrictions on your ventilation.

The **Chairman**. And did you object to the deletion of that?

Mr. **Beason**. Yes, sir. The first committee meeting in Denver was September 17 of 1985.

The **Chairman**. Okay. Now you were not the only member of the committee who objected to the downgrades; is that correct?

Mr. **Beason**. That is correct.

The **Chairman**. And I have a memo here written by William Bruce, the Chief of the Ventilation Division, a member of the committee, indicating that last-minute changes made by MSHA to the committee's proposal diminished the workers' safety. We will submit that memo into the record at this point.

[The memo referred to follows:]

Bruce

**U. S. Department of Labor**

Mine Safety and Health Administration
P O Box 25367
Denver, Colorado 80225

SAFETY AND HEALTH TECHNOLOGY CENTER
Ventilation Division

June 10, 1983

MEMORANDUM FOR: MADISON MCCULLOCH
Director, Technical Support
Arlington, VA

THROUGH: A. Z. DIMITROFF
Chief, Safety and Health Technology Center

William E. Bruce

FROM: WILLIAM E. BRUCE
Chief, Ventilation Division

SUBJECT: Draft Revision of Gassy Mine Standards for Metal and Nonmetal Mines

I have attached Category III of the proposed new gassy mine standards for metal and nonmetal mines. Technical and typographical errors were noted throughout the entire package which consists of a preamble and five individual mine categories. Category III, with handwritten comments thereon, is attached as an example of problems which, no doubt, pervade the entire package.

Most likely, the errors could have been avoided had the total committee membership been provided the opportunity to make one final review of the package prior to its release to interested parties. The errors were introduced into the package during final revisions and typing carried out in Arlington. As it happened, there was no opportunity for the full committee membership to participate in that final review, and although not of our making, the errors may prove to be an embarrassment to the committee and to Government workers in general. I personally did not receive the final standards package until noon on June 8, 1983, and the package was reportedly advertised in the Federal Register on June 10, 1983. With such a short period available for reviewing the 271-page document, there was no chance for the committee membership to review the entire package and to correct the deficiencies. This release of the document to the Federal Register, without a final committee review, was contrary to repeated assurances made to me that the committee would receive one last review immediately prior to publication in the Federal Register.

Of greater significance than the uncalled for typographical errors, however, is the potentially diminished worker safety that was introduced as a result of some of the changes which are noted in the attachment. I hope that my comments will result in changes in the present practice which apparently does not allow for a final review of draft standards by standards committee members.

Attachment

Category III: Mines in which noncombustible ore is extracted and either continuously liberate methane, or have the potential based on the history and geology of the province or mine to continuously liberate methane.

## CATEGORY III

## 58.21-610

## FIRE PREVENTION AND CONTROL

57.21-10 Mandatory. Men shall not smoke or carry smoking materials, matches, or lighters underground. The operator shall institute a reasonable program to ensure that persons entering the mine do not carry smoking materials, matches, or lighters.

58.21-610 (U) Draft Revision

Persons shall not smoke or carry smoking material, matches, or lighters underground. The operator shall institute a program to ensure that persons entering the mine do not carry smoking materials, matches, or lighters.

Explanation: Minor editorial changes have been made.

CATEGORY III

58.21-611

## FIRE PREVENTION AND CONTROL

57.21-11 Mandatory. Except when necessary for welding or cutting, open flames shall not be used in other than fresh air or in places where flammable gases are present or may enter the air current.

57.21-12 Mandatory. Immediately before and continuously during welding or cutting with an arc or open flame or soldering with an open flame, in other than fresh air, or in places where methane is present or may enter the air current, a competent person shall test for methane with a device approved by the Secretary for detecting methane.

57.21-13 A Mandatory. Welding or cutting with an arc or open flame or soldering with an open flame shall not be performed in atmospheres containing more than 1 percent of methane as determined by a device approved by the Secretary for detecting methane.

58.21-611 (U) Draft Revision

Open flames shall not be permitted underground except for welding, cutting, and other maintenance operations. Tests shall be conducted by a person designated by the mine operator in places where methane is present or may enter the air current immediately before and at intervals not to exceed 10 minutes while using open flames for these maintenance operations. Such operations shall not be performed in atmospheres containing 1.0 percent or more methane.

Explanation: This draft revision incorporates requirements of standards 57.21-12 and 57.21-13 which have been deleted. Provision of the 10-minute test interval will eliminate the term "continuous" in the original standard, and allows a practical interval between tests. A 10-minute time interval during a maintenance operation does not preclude more frequent testing for methane that may be needed when conditions warrant.

## CATEGORY III

## FIRE PREVENTION AND CONTROL

57.21-12 Mandatory. Immediately before and continuously during welding or cutting with an arc or open flame or soldering with an open flame, in other than fresh air, or in places where methane is present or may enter the air current, a competent person shall test for methane with a device approved by the Secretary for detecting methane.

57.21-12 Deleted

Explanation: Protection from the hazards addressed in 57.21-12 is provided by combining the provisions of 57.21-12 and 57.21-11 into draft revised standard 58.21-611.

## CATEGORY III

## FIRE PREVENTION AND CONTROL

57.21-13 Mandatory. Welding or cutting with an arc or open flame or soldering with an open flame shall not be performed in atmospheres containing more than 1 percent of methane as determined by a device approved by the Secretary for detecting methane.

57.21-13 Deleted

Explanation: Protection from the hazards addressed in 57.21-13 is provided by combining the provisions of 57.21-13 into draft revised standard 58.21-611.

CATEGORY III

58.21-620

VENTILATION

57.21-20 Mandatory. Main fans shall be:

(a) Installed on the surface.

(b) Installed to permit prompt reversal of airflow.

(c) Powered electrically.

(d) Installed in noncombustible housing provided with noncombustible air ducts.

(e) Offset not less than 15 feet from the nearest side of the mine opening to which the fan is connected. The fan installation shall be equipped with explosion-doors or a weak-wall having an area at least equivalent to the cross-sectional area of the airway. Such doors or weak-wall shall be in direct line with possible explosion forces.

(f) Provided with an automatic signal device to give warning or alarm should the fan system malfunction. The signal device shall be so located that it can be seen or heard by a responsible person at all times when persons are underground.

58.21-620 (SU) Draft Revision

Main fans shall be:

(a) Installed on the surface;

(b) Installed to permit reversal of airflow within 10 minutes;

(c) Installed in noncombustible housing provided with noncombustible air ducts;

(d) Powered electrically.

(e) Offset not less than 15 feet from the nearest side of the mine opening to which the fan is connected. The fan installation shall be equipped with explosion-doors or a weak-wall in direct line with possible explosion forces. The area of the doors or weak-wall shall be at least equivalent to the cross-sectional area of the airway;

(f) Provided with an automatic signal device to give visual or audible warning or alarm should the fan system malfunction. The signal device shall be so located that it can be seen or heard by a responsible person at all times when persons are underground;

CATEGORY III

58.21-620 (Continued)

VENTILATION

(g) Approved as permissible or all electrical equipment and cables located within or exposed to the forward and reverse airstream shall be approved, certified or accepted by MSHA in accordance with 30 CFR Part 18; and

(h) Exposed moving parts of the electrical equipment shall be constructed of static conducting materials if nonmetallic, or nonsparking materials if metallic.

Explanation: The 10-minute requirement of (b) clarifies "prompt" in the existing standard and retains the life saving capabilities of airflow reversal.

Fans in compliance with the second part of (g) typically bear no approval plate. They are usually driven by a nonexplosion proof, electrical motor and components which would not be exposed to methane in the airstream if ventilation reversal was implemented. Belts are an example of nonmetallic parts which must be static-free. Aluminum alloy fan blades containing less than 0.5 percent magnesium is an example of nonsparking meterials. Examples of electrical equipment in the airstream which must comply with 30 CFR Part 18 are drive motors, vibration sensors, temperature sensors and stopped fan alarms.

CATEGORY III

58.21-621

VENTILATION

57.21-21 Mandatory. Main fans shall be:

(a) Operated continuously while persons are underground except when stopped or slowed down for fan maintenance and/or system adjustments and related ventilation system adjustments and compliance is made with provisions of mandatory standard 57.21-24.

(b) Provided with pressure-recording gages which shall be examined daily for good operating condition. The charts of such gages shall be changed after completing one revolution.

(c) Inspected daily and logs kept of such inspections and of fan maintenance. Charts and logs shall be retained for a minimum of one year. Such records and charts shall be available for inspection by the Secretary or his duly authorized representative.

58.21-621 (SU) Draft Revision

Main fans shall be:

(a) Operated continuously except when an unplanned fan system failure occurs or except when stopped for fan maintenance, fan system adjustments, or both. Reference to 57.21-24 has been removed; a reference is needed!

(b) Provided with pressure-recording gages which shall be examined daily for good operating condition. The charts of such gages shall be changed after completing one revolution. The charts shall be retained for one year and shall be available for inspection by an authorized representative of the Secretary. Changed. Not parallel

(c) Inspected daily and logs kept of such inspections and of fan maintenance. The inspection and maintenance log shall be retained for a minimum period of one year and shall be available for inspection by an authorized representative of the Secretary. Formerly said logs

Explanation: The words "while persons are underground" were deleted because main fans should be operated at all times to prevent the build-up of methane and other hazardous gases that would occur if the fans were shut off during periods when the workers are absent and the mine is idle. The words "or slowed down" were deleted because maintenance is not normally performed on fans that are slowed down. The words "except when an unplanned fan system failure occurs" were added to cover such occurrences as power failures.

## CATEGORY III

## 58.21-622

## VENTILATION

57.21-22 Mandatory. The main intake and return air currents in mines shall be in separate shafts, slopes, or drifts, except that during shaft or slope development, vent tubing may be used in the same opening. Until a second opening to the surface can be provided, single shafts used for intake and return air shall be provided with a curtain wall or partition.

58.21-622 (U) Draft Revision

Prior to completion of a second opening to the surface, separation of intake and return air streams in a single opening shall be provided by:

(a) Ventilation tubing during shaft, slope, or drift development; and

(b) A curtain wall or partition in the completed shaft.

Explanation: The provisions of the existing standard were rearranged to improve clarity.

CATEGORY III

58.21-623

VENTILATION

57.21-23 Mandatory. When single shafts are used for intake and return the curtain wall or partition shall be constructed of reinforced concrete or equivalent and provided with pressure relief devices.

58.21-623 (U) Draft Revision

When single shafts are used for intake and return air streams:

(a) The curtain wall or partition shall be constructed of reinforced concrete or equivalent, noncombustible material and shall be provided with pressure relief devices; and

(b) The ventilation tubing shall be constructed of noncombustible material.

Explanation: The specifications for curtain wall or partition construction were expanded to clarify how such structures should be built. The specifications on noncombustibility were incorporated to assure that no shaft fire involves either the curtain wall or the ventilation tubing.

CATEGORY III

58.21-624

VENTILATION

57.21-24 Mandatory. (a) At mines where a single main fan is used and such fan stops, or at mines where multiple main fans are used and all such fans stop, the operator shall take the following immediate action:

(1) Withdraw all persons from the affected active workings.

(2) Deenergize the power in affected active workings.

(3) ,Withdraw all persons from the mine when a 1.0 percent concentration of methane in air is measured in any active working.

If ventilation has been interrupted for more than 15 minutes, all working places and active workings where methane may accumulate shall be examined by a competent person(s). The power shall not be restored or persons permitted to reenter the affected active workings until the competent person(s) has determined the methane concentration in such active workings is less than 1.0 percent.

(b) At mines where multiple main fans are used and one or more but not all fans stop, and air flow in intake and return air courses is maintained, the operator shall take the following immediate action:

(1) Monitor the air in all active workings for methane content.

(2) Withdraw all persons from, and deenergize the power, in all active workings when a 1.0 percent concentration of methane in the air is measured.

(3) Comply with all related mandatory standards in section 57.21.

58.21-624 (U) Draft Revision

(a) When any main fan stops, the operator shall take the following actions:

(1) Immediately withdraw all persons from each affected working place to an assembly point outby the working place;

(2) Immediately deenergize all power in each affected working place including diesel equipment; and

CATEGORY III

58.21-624 (Continued)

VENTILATION

(3) If the fan stoppage is for less than 15 minutes, power may be restored and work resumed after all working places and other active workings where methane is likely to accumulate have been examined by a person designated by the operator who has declared them to be free of accumulations of 1.0 percent or more methane.

should be "b"

(c) If the fan stoppage lasts 15 minutes or more:

(1) All mine power shall be deenergized in all working faces; and

(2) All persons shall be promptly withdrawn to the surface.

"c"

(d) After ventilation is restored, and after the main fans have been in operation for at least 30 minutes, an examination shall be made for methane by a person designated by the mine operator. The examination shall include all working places and other active workings where methane is likely to accumulate. The examiner shall complete his examination and declare the mine safe before power is reestablished and work resumed.

"d"

Not parallel

(e) The above procedures do not apply if a standby fan has commenced operation without interruption of normal ventilation and provided that the standby fan(s) deliver an underground air quantity equal to or greater than that delivered by the primary fan(s).

Formerly said "fan(s)"

Explanation: Provisions (1) and (2) of the existing standard were combined to clarify what action is to be taken in the event of a failure of any or all main fan(s). Withdrawal and evacuation actions have been related to a time interval rather than a methane level because standards 57.21-39 and 57.21-40 state what to do if 1.0 or 1.5 percent methane is detected. The 30-minute maximum limit before the mine power is deenergized is realistic because diesel personnel carriers would be used to transport personnel to the shafts in this class of mines. A provision has been added to allow return to work without evacuation in the event of a short-duration stoppage.

Item (b)(3) in the existing standard was deleted because such a requirement does not need to be stated.

CATEGORY III

58.21-625

## VENTILATION

57.21-25 Mandatory. When there has been a failure of mine ventilation other than a failure of a main fan as described in standard 57.21-24, the operator shall take the following immediate actions:

(a) Withdraw all persons from the affected active workings.

(b) Deenergize the power in affected active workings. The power shall not be restored or persons permitted to reenter the affected active workings until a competent person(s) has determined that the methane concentration in such active workings is less than 1.0 percent.

58.21-625 (U) Draft Revision

(a) When there has been a failure of the mine ventilation other than a failure of a main fan, the operator shall take the following action:

(1) Immediately withdraw all persons from each affected working place to an assembly point outby the working place;

(2) Immediately deenergize all power in each affected working place including diesel equipment; and

(3) Monitor the air in all affected working places and withdraw all persons from the mine when a methane concentration of 1.0 percent is measured in any active working.

(b) After ventilation has been restored, persons may reenter the mine or the working places, power may be restored, and work may be resumed only after a person designated by the operator has examined all working places and other active workings and found them to be free of methane concentrations of 1.0 percent or more.

Explanation: The draft standard was changed to be consistent with the action to be taken when 1.0 percent methane is detected in a working place and to be consistent with what action is taken when a main fan stops. Wording was clarified.

CATEGORY III

58.21-627

## VENTILATION

57.21-27 Mandatory. When the main fan or fans have been shut down with all men out of the mine, no person, other than those competent to examine the mine, or other authorized persons, shall go underground until the fans have been started and the mine is examined for methane and other hazards and declared safe.

Wording was capriciously changed.

58.21-627 (U) Draft Revision Often there are multiple fans and the former wording addressed multiple fans.

When the main fan has stopped while all persons are out of the mine, only those persons designated by the mine operator to examine the mine or necessary to make changes shall be allowed underground until the fan has been started and the mine has been tested for, and determined to be free of,
methane.

Explanation: The intent of the standard was not changed. Changes have been made for clarity.

## CATEGORY III

## VENTILATION

57.21-28 Mandatory. Booster fans shall be:

(a) Operated by permissible drive units maintained in permissible condition.

(b) Operated only in air containing less than 1.0 percent methane.

(c) Kept in continuous operation when persons are in active workings of the mine affected by such fans.

57.21-28 Deleted

Combined with draft revised standard 58.21-629.

CATEGORY III

58.21-629

VENTILATION

57.21-28 Mandatory. Booster fans shall be:

(a) Operated by permissible drive units maintained in permissible condition.

(b) Operated only in air containing less than 1.0 percent methane.

(c) Kept in continuous operation when persons are in active workings of the mine affected by such fans.

58.21-629 (U) Draft Revision

Take out

Should say "57.21-29 Mandatory. Booster fans shall be..." As the 3/15/83 version indicated

(a) Provided with an automatic signal device to give warning or alarm should the fan system malfunction. The signal device shall be so located that it can be seen or heard by a responsible person at all times when persons are underground.

(b) Equipped with a device that automatically deenergizes the power in affected active workings should the fan system malfunction.

(c) Provided with air locks, the doors of which open automatically should the fan stop.

(d) Equipped with two sets of controls capable of starting, stopping, and reversing the fans. A second set of controls shall be at another location remote from the fans.

58.21-629 (U) Draft Revision

(a) Booster fans shall be permissible and shall be:

(1) Operated continuously, except that fans shall be deenergized automatically when methane levels reach 1.0 percent at the fan;

(2) Provided with an automatic signal device to give an audible or visual warning or alarm should the fan system malfunction. The signal device shall be located so that it can be seen or heard by a responsible person at all times when persons are underground;

(3) Equipped with a device that automatically deenergizes the power in the affected active workings should the fan system malfunction; and

(4) Equipped with two sets of controls capable of starting, stopping, and reversing the fan. One set shall be located at the fan and a second set shall be located at another accessible location remote from the fan.

Formerly said "fans."

Formerly (3-15-83) this said "fans; there may be multiple fans in parallel.

CATEGORY III

58.21-629 (Continued)

VENTILATION

(b) The booster fan installation shall be:

(1) Provided with doors which open automatically if all the fans in the installation stop. The doors shall be sized so that when the fan stops an open area, including the open area within the fan housing of at least 50 percent of the airway area is provided for air flow. This provision does not apply to booster fans installed in ducts; and

(2) Provided with an air lock when passage through the bulk head is necessary [when the fan is running.]

Explanation: The draft revision combines the requirements of standard 57.21-28 and 57.21-29 and clarifies the requirements of this and standard 57.21-28. It specifies the minimum amount of open area to be available for airflow in the event of failure of the booster fans. The revised standard eliminates the requirements for automatic opening doors for fans operated in ducts. The revision separates the need for self-opening doors from the need for an air lock. Moreover, the standard clarifies when an air lock is required. Methane concentrations were changed to provide action levels appropriate for the particular hazards occurring in this class of mines.

This Arlington change jeopardizes worker safety and should be deleted. The original standard required air locks; our committee (2-17-83) wording did not require air locks unless access is necessary. The above Arlington change could cause an injury because the fan has remote start capability and if the fan starts while a worker is going through a single door, he will be injured by the sudden door movement. Not so with an air lock

## CATEGORY III

## 58.21-630

## VENTILATION

57.21-30 Mandatory. Auxilary fans shall be of a permissible type, maintained in permissible condition, so located and operated to avoid recirculation of air. Auxilary fans shall not be used to ventilate any working place during the interruption of normal mine ventilation. If the auxilary fan is stopped or fails, the electrical equipment in the affected area shall be stopped and the power disconnected at the power source until ventilation in the affected area is restored. Tests shall be made at the fan for methane before auxilary fans are started. The air passing over or through auxilary fan units shall not exceed 1.0 percent of methane.

58.21-630 (U) Draft Revision

Electric auxiliary fans shall be permissible and operated so that the total volume of air handled does not exceed the available volume of intake air. Auxiliary fans shall not be used to ventilate any working place during the interruption of normal mine ventilation. If the auxiliary fan is stopped or fails, the electrical and diesel equipment in the affected area shall be deenergized at the power source until ventilation in the affected area is restored. Tests shall be made at the fan for methane before auxiliary fans are started. Such fans shall not be operated when air passing over or through the fan contains 1.0 percent or more methane.

Explanation: The word "avoid" was eliminated in reference to recirculation as commentors felt such compliance to be unattainable. A measureable quantity of air is substituted for clarity. Substitution of the word "deenergized" for "disconnected" and wording of the last sentence was changed for consistency with other draft revised standards.

## CATEGORY III

## VENTILATION

57.21-31 Mandatory. Auxilary fans shall be inspected by competent persons at least twice each operating shift.

57.21-31 Delete

The requirements of this standard are adequately covered by draft revised standards 57.21-30, 57.21-35, 57.21-46, and 57.21-48.

## CATEGORY III

## VENTILATION

57.21-33 Mandatory. The volume and velocity of the current of air coursed through-all active areas shall be sufficient to dilute, render harmless, and carry away methane smoke, fumes, and dust.

57.21-33 Deleted

Volume of air requirements are specified in draft revised standard 58.21-634.

## CATEGORY III

## 58.21-634

## VENTILATION

57.21-34 Mandatory. The quantity of air coursed through the last open crosscut in pairs or sets of entries or through other ventilation openings nearest the face, shall be at least 6,000 cubic feet per minute, or 9,000 cubic feet per minute in longwall and continuous miner sections.

58.21-634 (U) Draft Revision

The quantity of air coursed through the last open crosscut in pairs or sets of entries, or through other ventilation openings nearest the face, shall be at least 6,000 cubic feet per minute, or 9,000 cubic feet per minute in long-wall and continuous miner sections. The quantity of air across each face at a working place shall be at least 2,000 CFM.

Explanation: The additional requirement of 2,000 CFM in active working faces specifies an amount of air flow to prevent a build-up of methane and focuses ventilation in active areas. This amount is necessary to assure turbulent flow so that gasses are throughly mixed and removed and not allowed to stratify. (Hartman - 1982)

## CATEGORY III

## 58.21-635

## VENTILATION

57.21-35 Mandatory. At least once each week, a qualified person shall measure the volume of air entering the main intakes and leaving the main returns, the volume of the intake and return of each split, and the volume through the last open crosscuts or other ventilation openings nearest the active faces. Records of such measurements shall be kept in a book on the surface.

57-21-64 Mandatory. Each operator shall use permissible devices accepted by the Secretary of Labor for detecting flammable gases, oxygen deficiency, carbon monoxide, and other air contaminants. Such permissible devices shall be provided and maintained in serviceable and permissible condition. In the detection of flammable gases, a permissible flame safety lamp may be used only as a supplementary testing device.

57.21-65 Mandatory. At intervals not greater than seven (7) days, the mine foreman (or other competent person designated by the mine foreman) shall examine for hazardous conditions and for compliance with health and safety standards, and shall test for methane and carbon monoxide. The tests shall be made with approved devices at the following locations:

(a) In the return of each split where it enters the main return;

(b) Adjacent to retreat areas, if accessible;

(c) At seals;

(d) In the main return;

(e) In at least one entry of each intake and return airway;

(f) In idle workings; and

(g) In unsealed abandoned workings, as conditions permit.

57.21-66 Mandatory. The mine foreman or other designated official shall read and countersign promptly the reports of the required examinations made by competent persons. Where such reports disclose hazardous conditions, the affected employees shall be so informed and such conditions shall be corrected promptly. If such conditions create an imminent danger, the operator shall withdraw all persons from, or prevent, any person from entering, as the case may be, the area affected by such conditions, except those persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977 until such danger is abated. A responsible mine official at the next highest level of authority, if such level exists, shall also read and countersign at least weekly the required reports to insure that proper inspections have been made and remedial action taken.

CATEGORY III

58.21-635

## VENTILATION

58.21-635 (U) Draft Revision

At least every 7 days, a person designated by the mine operator shall:

(a) Test for methane and carbon monoxide at the following locations:

(1) In the return of each split where it enters the main return;

(2) Adjacent to retreat areas;

(3) At seals;

(4) In the main return;

(5) In at least one entry of each intake and return airway;

(6) In idle workings; and

(7) In unsealed abandoned workings.

(b) Measure the volume of air at the following locations:

(1) Entering the main intakes;

(2) Leaving the main returns;

(3) Entering each main split;

(4) Returning from each main split; and

(5) At the last open crosscuts or other ventilation openings nearest the active faces.

(c) Certification of those examinations shall be made by the mine operator. Certifications shall be kept for 1 year, and shall be available to an authorized representative of the Secretary.

Explanation: Use of the words "designated by the mine operator" instead of "qualified" is to improve clarity. The one-year period was added for record retention as the standard was previously vague as to how long these records need to be kept.

Standards 57.21-65 and 57.21-66 were combined with 57.21-35. These revisions were made to clarify the requirements of this standard and to combine similar requirements of standards in this section. The requirement for tests to be made with approved devices is covered by revised standard 57.21-64. Record keeping requirements were incorporated so that standards 57.21-65 and 57.21-66 could be deleted.

CATEGORY III

58.21-636

VENTILATION

57.21-36 Mandatory. Permanently installed battery-charging stations and transformer stations in combustible areas shall be ventilated by separate splits of air conducted directly to return air courses. Permanently installed means stations that intended to exist for one year or more.

58.21-636 (U) Draft Revision

Battery-charging stations and transformer stations shall be ventilated by separate splits of air conducted directly to return air courses.

Explanation: This standard is considered necessary to protect the safety of miners.

## CATEGORY III

## 58.21-638

## VENTILATION

57.21-38 Mandatory. Changes in ventilation that materially affect the main air current or any split thereof and may affect the safety of persons in the mine shall be made only when the mine is idle. Only those persons engaged in making such changes shall be permitted in the mine during the change. Power shall be removed from the areas affected by the change before work starts and not restored until the effect of the change has been ascertained and the affected areas determined to be safe by a qualified person.

58.21-638 (U) Draft Revision

(a) Changes in ventilation of the main air current that may affect the safety of persons shall be made only when the mine is idle.

(b) Changes in ventilation of any main air split that may affect the safety of persons shall be made only when the affected workings are idle.

(c) Only those persons necessary to make such changes as designated in paragraphs (a) and (b) shall be permitted in the affected workings during the changes.

(d) Power shall be deenergized in the areas affected by the changes designated in paragraphs (a) and (b) before work starts and not restored until the results of the changes have been ascertained and a person designated by the mine operator has determined that the methane concentration in the areas affected is less than 1.0 percent.

Explanation: Basic requirements of the standard were not changed. Wording changes are to improve clarity.

## CATEGORY III

## 58.21-639

## VENTILATION

57.21-39 Mandatory. If methane gas in excess of 1.0 percent is detected in the air not less than 12 inches from the back, face, or rib of an underground working place or places, adjustments shall be made in the ventilation immediately so that the concentration of methane gas in such air is reduced to 1.0 percent or less. While such changes or adjustments are underway and until they have been achieved, power to electric equipment located in such place shall be cut off, no other work shall be permitted in such place, and due precautions shall be carried out under the direction of the operator or his agent so as not to endanger other areas of the mine.

should be "or" as in the latest committee version of 4-13-83

### 58.21-639 (U) Draft Revision

If 1.0 percent or more methane is present in air returning from a working place, or is present in the air not less than 12 inches from the back, face, rib, and floor of a working place, changes or adjustments shall be made in the ventilation immediately so that the concentration of methane is reduced to less than 1.0 percent. While such changes or adjustments are underway, and until they have been achieved, power to equipment located in the working place shall be deenergized and no other work shall be permitted in the working place.

Explanation: Basic requirements of the standard were not changed. Wording was changed slightly to be as consistent as possible with wording of draft revised standard 58.21-640 (a). The word "cut off" was changed to "deenergized" for consistency with terminology in other standards.

CATEGORY III

58.21-640

VENTILATION

57.21-40 Mandatory. If 1.5 percent or higher concentrations of methane gas is present in air returning from an underground working place or places, or is present in the air not less than 12 inches from the back, face, or rib of an underground working place, all men other than those persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977 shall be withdrawn from the area of the mine endangered by such methane gas until the concentration of methane in such areas is reduced to 1.0 percent or less.

Should be "or"

58.21-640 (U) Draft Revision

(a) If 1.5 percent or more methane is present in air returning from a working place, or is present in the air not less than 12 inches from the back, face, rib, and floor of a working place, all persons other than those persons designated by the mine operator shall be withdrawn from the area of the mine endangered until the concentration of methane is reduced to less than 1.0 percent.

Dropping the 104(c) provision may cause problems. The operator may designate too many persons. The change could jeopardize worker safety

(b) The methane content of the air current in a bleeder system at the point where the bleeder split enters a main return split or at any other accessible point in a bleeder system, shall be less than 2.0 percent. If the methane content in a bleeder system is 2.0 percent or more, immediate corrective actions shall be taken to reduce the methane content to less than 2.0 percent. While such corrective actions are underway, and until the methane concentration has been reduced below 2.0 percent, no other work shall be permitted upstream from the problem area on ventilation splits which contribute return air to the bleeder system. If the concentration of methane has not been reduced to less than 2.0 percent within 30 minutes, or if the methane concentration reaches 2.5 percent or more during the 30-minute period, then all persons other than those persons designated by the mine operator shall be withdrawn from the affected area of the mine, including personnel in upstream working areas, until the concentration of methane has been reduced to less than 2.0 percent.

ditto

Explanation: Part (a) - The word "underground was removed since Part 57 is designated for underground mines. The word "men" editorially was changed to "persons." Other minor changes were made to make the wording consistent with the wording in standard 57.21-39.

Should be 640 not 680

Part (b) - Provisions in (b) were added because Part 57 presently contains no standard for bleeder systems. The action levels of 2.0 and 2.5 percent took into consideration comments from the mining community. Provisions for cessation of work upstream from the problem area were added because any upstream mining would only add methane to the bleeder system. No provision was stated in regard to deenergization of power in upstream locations, because this is covered by draft revised standards 58.21-639 and 58.21-680. A 30-minute time limit and a maximum methane limit were specified to protect those persons in the area who are not needed for corrective actions.

## CATEGORY III

## 58.21-641

## VENTILATION

57.21-41 Mandatory. Air that has passed by an opening of any unsealed abandoned area and contains 0.25 percent or more of methane shall be coursed directly to a return airway. Examinations of such air shall be conducted during the preshift examinations required by ¶ 57.21-59.

This is not the symbol used in present CFR30 nor in the 2-17-83 Committee version.

57.21-42 Mandatory. Air that has passed through an abandoned panel or area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in such mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in such mine, except that such air, if it does not contain 0.25 volume per centum or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

58.21-641 (U) Draft Revision

Air that has passed by or through any abandoned or unsealed inactive area and that is contaminated with 0.25 percent or more methane shall:

(a) Not be used to ventilate any working place in the mine;

(b) Be coursed directly to a return airway; and

(c) Be examined daily for methane and carbon monoxide by a person designated by the operator.

Explanation: This draft standard was revised to allow use of air containing less than 0.25 percent methane regardless of the source or route. Testing for methane and carbon monoxide was incorporated to specifically identify the gases to be included in the daily examination. Testing for carbon monoxide is essential since the abandoned or inactive areas involved are often inaccessible and such testing might indicate a potential problem.

Most requirements of 57.21-42 are incorporated into this standard except that limitations for use of mine air essentially prohibited use of air from inaccessible areas or from areas that were unsafe for inspection. The revision allows air from inaccessible areas to be used if it meets the requirements of the draft revision.

## CATEGORY III

## VENTILATION

57.21-42 Mandatory. Air that has passed through an abandoned panel or area which is inaccessible or unsafe for inspection shall not be used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in such mine, except that such air, if it does not contain 0.25 volume per centum or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

57.21-42 Deleted. Combined with draft revised standard 58.21-641.

This entire standard is improperly worded. It should be the existing standard and was correct in the Committees 2-2-83 version. This kind of error is difficult to understand, since the proper wording is contained on a flexible disk for the word processing units.

See CFR 30 for proper wording.

58.21-643

VENTILATION

57.21-43 Mandatory. Abandoned areas shall be sealed or ventilated; areas that are not sealed shall be barricaded and posted against unauthorized entry.

58.21-643 (U) Draft Revision

Abandoned areas shall be:

(a) Sealed; or

(b) Ventilated, barricaded and posted against unauthorized entry.

Explanation: Abandoned areas in this class of mine present the same type of gas hazard as exists in other gassy mines. Wording was changed slightly to clarify.

CATEGORY III

58.21-644

VENTILATION

57.21-44 Mandatory. Seals shall be of substantial construction. Exposed surfaces shall be made of fire-resistant material or, if the commodity mined is combustible, seals shall be made of incombustible material.

57.21-45 Mandatory. One or more seals of every sealed area shall be fitted with a pipe and valve or cap to permit sampling of the atmosphere and measurment of the pressure behind such seals.

58.21-644 (U) Draft Revision

Seals shall be of substantial construction and exposed surfaces shall be noncombustible. At least one seal of every sealed area shall be fitted with a pipe and a valve or pipe cap to permit sampling of the atmosphere and measurement of the pressure behind such seals.

Explanation: Existing standards 57.21-44 and 57.21-45 were combined because both related to construction of seals. The term "noncombustible" was utilized to designate the degree of fire resistance of the surface of the seal since "noncombustible" has been defined. Noncombustible surfaces are needed to help prevent seal burn-through since seals often isolate otherwise hazardous atmospheres from the general mine atmosphere. Seals prevent potentially dangerous air in abandoned areas from entering working places.

## CATEGORY III

## VENTILATION

57.21-45 Mandatory. One or more seals of every sealed area shall be fitted with a pipe and valve or cap to permit sampling of the atmosphere and measurement of the pressure behind such seals.

57.21-45 Deleted

Explanation: The provisions of this standard were closely related to the provisions of 57.21-44 and for this reason, the two standards were combined and are identified as draft revised standard 58.21-644.

CATEGORY III

58.21-646

VENTILATION

57.21-46 Mandatory. Crosscuts shall made at intervals not in excess of 100 feet between entries and between rooms.

58.21-646 (U) Draft Revision

Crosscuts shall be made at intervals not to exceed 250 feet between entries and between rooms. When crosscut intervals exceed 150 feet, then the average air velocity across the face in a room or entry in a working place shall be at least 50 feet per minute.

Explanation: Extending crosscut intervals in this revision should decrease intake to return leakage through a reduction in necessary stoppings. Since it is more difficult to ventilate these longer rooms, the minimum requirement of 50 feet per minute was established to ensure adequate air flow through these longer rooms to dissipate methane. It also considers petitions for modifications which have been granted for this standard. Air velocity was used rather than air quantity because rooms and entries vary in size.

## CATEGORY III

## 58.21-648

## VENTILATION

57.21-48 Mandatory. Line brattice or other suitable devices shall be installed from the last open crosscut to a point near the face to assure positive air flow to the face of every active underground working place, unless the Secretary or his authorized representative permits an exception to this requirement.

58.21-648 (U) Draft Revision

Line brattice or fans with ducting shall be used to provide positive air flow across each working face.

Explanation: Revised wording of this standard was to clarify "other suitable devices" by specifying fans with ducting. Reference to placement of fans and ducts or brattice was eliminated as draft revised standard 58.21-634 requires a minimum amount of air flow to be maintained regardless of fan or brattice placement. Additionally, this revision reflects current application of ventilation practices in the industry.

Formerly the committee version of 4-20-83 said "....positive air flow across each face within a working place."

The reworded version will allow any face in a set of advancing multiple entries to be totally unventilated, thus allowing a methane buildup and thus jeopardizing worker safety.

The Green River MSHA personnel may have a problem with the wording relative to pillar extraction, but that can be handled and still retain the 4-20-8 wording.

CATEGORY III

58.21-649

## VENTILATION

57.21-49 Mandatory. Brattice cloth shall be of flame-resistant material.

58.21-649 (U) Draft Revision

Brattice cloth and ducting shall have a flame spread rating of 25 or less.

Explanation: This draft revision clarifies the acceptable degree of flame resistance, which was previously nonspecific.

## CATEGORY III

## VENTILATION

57.21-50 Mandatory. Damaged brattices shall be repaired promptly.

57.21-50 Deleted

The terms "damaged" and "promptly" were nonspecific. Protection intended by this standard is provided by other draft revised standards within this section.

## CATEGORY III

58.21-651

## VENTILATION

57.21-51 Mandatory. Crosscuts shall be provided where practicable at or within eighteen (18) feet of the face of drifts, entries, and rooms before the workings are abandoned in any unsealed area of the mine. When crosscuts are not practicable, line brattice or other suitable means of ventilating shall be provided to the drifts, entries, or rooms.

58.21-651 (U) No change

Explanation: This standard is considered necessary for the safety of miners.

## CATEGORY III

## VENTILATION

57.21-52 Mandatory. Entries or rooms shall not be started off entries beyond the last open crosscuts, except that room necks and entries not to exceed 18 feet in depth may be turned off entries beyond the last open crosscuts if such room necks or entries are kept free of accumulation of methane by use of line brattice or other adequate means.

57.21-52 Deleted

Protection intended by this standard is provided by other revised standards within this section.

## CATEGORY III

## 58.21-653

## VENTILATION

57.21-53 Mandatory. Stoppings in crosscuts between intake and return airways, on entries other than room entries, shall be built of solid, substantial material; exposed surfaces shall be made of fire-resistant material or, if the material mined is combustible material.

58.21-653 (U) Draft Revision

Permanent stoppings that separate intake airways from return airways shall be of substantial construction. Exposed surfaces shall have a flame spread rating of 25 or less.

Explanation: Wording was developed which is applicable to the conditions that exist in this class of mines. Specifying the flame spread rating clarifies the required degree of flame resistance. "Flame spread rating" has been defined by MSHA's draft proposed standard for Section 4, Fire Prevention and Control.

CATEGORY III

58.21-655

VENTILATION

57.21-55 Mandatory. The main ventilation shall be so arranged by means of air locks, overcasts, or undercasts that the passage of trips or persons does not cause interruptions of air currents. Where air locks are impracticable, single doors may be used if they attended constantly while the areas of the mine affected by the doors are being worked, unless they are operated mechanically or are self-closing.

58.21-655 (U) Draft Revision

The main ventilation shall be arranged by means of air locks, overcasts, or undercasts so that the passage of trips or persons does not cause interruptions of air currents. Where air locks are impracticable, single doors may be used if: (a) The door is attended constantly while the areas of the mine affected by the doors are being worked, or (b) the door is self-closing.

Explanation: The draft standard has been revised and reorganized for clarity. Air control structures are needed to prevent interruption of the primary air stream and to assure satisfactory air quality in this category of mines.

CATEGORY III

VENTILATION

57.21-56 Mandatory. Air locks shall be ventilated sufficiently to prevent accumulations of flammable gas inside the locks.

57.21-56 Deleted

Explanation: Protection afforded by this standard is adequately provided by other revised standards within this section.

CATEGORY III

58.21-657

## VENTILATION

57.21-57 Mandatory. Doors which control the flow of air by being closed shall be kept closed, except when persons or equipment are passing through such doorways. Doors shall be plainly marked to indicate whether they shall be closed or open for ventilation control purposes.

58.21-657 (U) No Change

Explanation: This draft standard is considered necessary for the safety of miners.

CATEGORY III

58.21-658

VENTILATION

57.21-58 Mandatory. Overcasts and undercasts shall be:

(a) Constructed tightly of incombustible material.

(b) Of sufficient strength to withstand possible falls from the back.

(c) Kept clear of obstruction.

58.21-658 (U) Draft Revision

Overcasts and undercasts shall be:

(a) Airtight;

(b) Substantially constructed;

(c) Constructed of noncombustible materials; and

(d) Kept clear of obstructions.

Explanation: The basic requirements of this standard were not changed. Revised wording was used for clarity. The term "noncombustible" was substituted for the term "incombustible" because it has been defined for usage by MSHA's draft proposed standards for Section 4, Fire Prevention and Control.

CATEGORY III

58.21-659

VENTILATION

57.21-59 Mandatory. Preshift examinations shall be made of all working areas by qualified persons within 3 hours before any workmen, other than examiners, enter the mine.

58.21-659 (U) Draft Revision

(a) Within 3 hours immediately preceding the beginning of any shift, and before any person on such shift enters the mine, a person designated by the mine operator shall examine the mine to assure that the mine is free of methane concentrations of 1.0 percent or more.

(b) When one shift immediately precedes another shift, the preshift examination may be made during the last 3 hours of the previous shift.

Explanation: The basic requirements of the existing standard were not changed. However, revisions have been made for clarity. The word "workman" was replaced with the word "persons."

## CATEGORY III

## VENTILATION

57.21-61 Mandatory. Only qualified examiners and persons authorized to correct the dangerous conditions shall enter places or areas where danger signs are posted.

57.21-61 Deleted

Explanation: Protection afforded by this standard is adequately provided by other draft revised standards within this section.

## CATEGORY III

## VENTILATION

57.21-62 Mandatory. Danger signs shall not be removed until the dangerous conditions have been removed.

57.21-62 Deleted

Explanation: Protection afforded by this standard is adequately provided by other draft revised standards within this section.

## CATEGORY III

## 58.21-664

## VENTILATION

57.21-64 Mandatory. Each operator shall use permissible devices accepted by the Secretary of Labor for detecting flammable gases, oxygen deficiency, carbon monoxide, and other air contaminants. Such permissible devices shall be provided and maintained in serviceable and permissible condition. In the detection of flammable gases, a permissible flame safety lamp may be used only as a supplementary testing device.

58.21-664 (U) Draft Revision

(a) Devices used for measuring air quality and concentrations of methane shall be permissible and maintained in accordance with manufacturers' instruction, or otherwise maintained in accurate operating condition.

(b) The operator of any mine in which methane monitors are installed shall establish a written maintenance program designed to keep such monitors operative. At least every two weeks the methane monitors shall be checked for operating accuracy with a known methane-air mixture and shall be calibrated as necessary. A record of calibration tests shall be kept for one year and shall be available to an authorized representative of the Secretary.

This Arlington change probably should be revised.

Changed from 4-20-83 committee version) Needs work.

(c) A permissible flame safety lamp may be used as a supplementary testing device in the detection of methane.

(d) If remote sampling devices are used to measure air quality and concentrations of methane or other combustible gases, then that portion of the instrumentation located in return air or in places where methane or other combustible gases may be present shall be permissible.

(e) If air samples are delivered to remote analytical devices through sampling tubes, then such tubes shall be provided with in-line flame arrestors. Flame arrestors shall be located upstream from all pumping and analytical instruments.

Explanation: This draft revision provides for calibration and maintenance of methane monitors which is considered as essential. The calibration provision is considered essential to obtaining reliable measurement data. The draft revised standard includes a new recordkeeping requirement which the Agency believes is essential to the effective implementation of the standard. The Agency has included a minimum period necessary for compliance and also believes that the recordkeeping provision is consistent with industry practice.

## CATEGORY III

## VENTILATION

57.21-65 Mandatory. At intervals not greater than seven (7) days, the mine foreman (or other person designated by the mine foreman) shall examine for hazardous conditions and for compliance with health and safety standards; and shall test for methane and carbon monoxide. The tests shall be made with approved devices at the following locations:

This is the present day standard; the word "competent" has been left out. See CFR30

(a) In the return of each split where it enters the main return;

(b) Adjacent to retreat areas, if accessible;

(c) At seals;

(d) In the main return;

(e) In at least one entry of each intake and return airway;

(f) In idle workings; and

(g) In unsealed abandoned workings, as conditions permit.

57.21-65 Deleted

Explanation: Requirements of this standard were incorporated into draft revised standard 58.21-635.

## CATEGORY III

## VENTILATION

57.21-66 Mandatory. The mine foreman or other designated official shall read and countersign promptly the reports of the required examinations made by competent persons. Where such reports disclose hazardous conditions, the affected employees shall be so informed and such conditions shall be corrected promptly. If such conditions create an imminent danger, the operator shall withdraw all persons from, or prevent, any person from entering, as the case may be, the area affected by such conditions, except those persons referred to in section 104(c) of the Federal Mine Safety and Health Act of 1977 until such danger is abated. A responsible mine official at the next highest level of authority, if such level exists, shall also read and countersign at least weekly the required reports to insure that proper inspections have been made and remedial action taken.

57.21-66 Deleted

Explanation: Requirements of this standard were incorporated into draft revised standard 58.21-635.

CATEGORY III
58.21-667

## VENTILATION

57.21-67 Mandatory. All gassy mines shall be ventilated mechanically.

58.21-667 (U) Draft Revision

All mines shall be ventilated mechanically.

Explanation: The intent of this standard was not changed. The word "gassy" was deleted to correspond with the mine category system.

CATEGORY III

58.21-668

## VENTILATION

57.21-68 Mandatory. Airflow shall be maintained in all intake and return air courses of a mine. When multiple main fans are used, such ventilation systems shall not develop neutral areas (areas without perceptible air movement).

58.21-668 (U) No Change

Explanation: This standard is considered necessary for the safety of miners.

CATEGORY III
58.21-669

## VENTILATION

57.21-69 Mandatory. In mines ventilated by a combination of multiple blowing or multiple exhausting main fans, each main fan installation shall be equipped with noncombustible doors designed and positioned so that, in the event of failure of a main fan, these doors will automatically close to prevent air reversal through the fan. The doors shall be located so that they are not in direct line with forces which would come out of the mine, should an explosion occur.

58.21-669 (U) No Change

Explanation: This standard is retained for this category of mines to assure safety and health in gassy mines if a single main fan fails where multiple fans are installed. The requirement for a self-closing door assures that ventilating air will flow through the mine, though at a reduced rate, when one fan in a parallel set of fans fails. The requirement for a noncombustible self-closing door assures that all elements of main fans are noncombustible and that this standard is compatible with other standards in section 21 such as draft revised standard 58.21-620.

## CATEGORY III

## EQUIPMENT

57.21-76 Mandatory. Diesel-powered equipment shall not be taken into or operating in places where methane exceeds 1.0 percent at any point not less than 12 inches from the back, face, or rib.

57.21-76 Deleted

Explanation: This standard was incorporated into draft revised standard 58.21-678.

## CATEGORY III

## 58.21-677

## EQUIPMENT

57.21-77 Mandatory. Trolley wires and trolley feeder wires shall be on intake air and shall not extend into the last open crosscut or other ventilation opening. Such wires shall be kept at least 150 feet from pillar recovery workings.

58.21-677 (U) Draft Revision

Trolley wires and trolley feeder wires shall be on intake air and shall not extend into the last open crosscut or other ventilation opening nearest the working face. Such wires shall be kept at least 150 feet from pillar recovery workings.

Explanation: Wording was changed for clarity.

## CATEGORY III

## 58.21-678

## EQUIPMENT

57.21-76 Mandatory. Diesel-powered equipment shall not be taken into or operating in places where methane exceeds 1.0 percent at any point not less than 12 inches from the back, face, or rib.

57.21-78 Mandatory. Only permissible equipment maintained in permissible condition shall be used beyond the last open crosscut or in places where dangerous quantities of flammable gases are present or may enter the air current.

57.21-79 Mandatory. Only permissible distribution boxes shall be used in working places and other places where 1 percent or more of methane may be present or may enter the air current.

58.21-678 (U) Draft Revision

All electrical and internal combustion-powered equipment used in or beyond the last open crosscut shall be permissible. Permissible and nonpermissible equipment shall not be operated in atmospheres containing 1.0 percent or more methane.

Explanation: The requirements of existing standard 57.21-78 were not changed. Word changes were made to address the question of equipment being operated in the last open crosscut. The requirements of existing standards 57.21-76 and 57.21-79 were also incorporated and clarified.

## CATEGORY III

## EQUIPMENT

57.21-79 Mandatory. Only permissible distribution boxes shall be used in working places and other places where 1 percent or more of methane may be present or may enter the air current.

57.21-79 Deleted

Explanation: Requirements of this standard were incorporated into draft revised standard 58.21-678.

CATEGORY III

58.21-680

EQUIPMENT

57.21-80 Mandatory. A methane monitoring device (methane monitor), approved by the Secretary of Labor, shall be installed and properly maintained on all continuous miners and longwall face equipment. The sensing unit of the methane monitor shall be positioned as close to the working face as practicable. When the concentration of methane is 1.0 percent or more, the monitor shall give a warning and deenergize the equipment automatically when the concentration reaches 1.5 percent. The methane monitor also shall de-energize such equipment automatically when the monitor is not functioning properly.

58.21-680 (U) Draft Revision

A permissible methane monitoring device (methane monitor) shall be installed on continuous mining, face drilling, undercutting and longwall mining machines. The sensing units of the methane monitor shall be positioned as close to the working face as practical. When the concentrations of methane gas reach 1.0 percent, the monitor shall give a warning and the equipment operator shall deenergize the equipment. When the concentrations of methane gas reach 1.5 percent, or should the monitor malfunction, the monitor shall deenergize the machine automatically. The monitor shall prevent starting the machine in methane concentrations of 1.5 percent or more.

Explanation: The basic intent of the standard is unchanged. Wording and action levels were changed to provide safety of face operations applicable to the particular hazards associated with this category of mines. The requirement that the methane monitoring system should prevent starting of the machine when concentrations of 1.5 percent or more methane gas are present was added to guard against use of methane monitoring systems which may allow starting a machine when hazardous concentrations of methane gas are present.

## CATEGORY III

## 58.21-690

## ILLUMINATION

57.21-90 Mandatory. Only permissible electric lamps shall be used for portable illumination underground.

58.21-690 Draft Revision

Electric lamps which provide personal illumination shall be permissible under 30 CFR Parts 19 or 20, as appropriate.

Explanation: This revision was to clarify the existing standard by specifying the electric lamps involved.

CATEGORY III

58.21-695

EXPLOSIVES

57.21-95 Mandatory. Explosives not designated as permissible by the Bureau of Mines or the Mine Safety and Health Administration shall not be used in any underground gassy mine until the Bureau of Mines and State Inspector of Mines have given written approval for each such specific explosive to be used.

57.21-96 Mandatory. The Mine Safety and Health Administration and the State Inspector of Mines, in granting approval referred to in standard 57.21-95, shall provide the operator with a written list of conditions for using the specific explosives covered by the approval and adapted to the mining operation.

57.21-97 Mandatory. Blasts in gassy mines shall be initiated electrically, and multiple-shot blasts shall be initiated only with millisecond-delay detonators. Permissible blasting units of capacity suitable for the number of holes in a round to be blasted shall be used unless the round is fired from the surface when all men are out of the mine.

58.21-695 (U) Draft Revision

Explosive materials and blasting units shall not be used until the mine operator has received written permission from the district manager for the district in which the mine is located for each explosive material and blasting unit to be used. In granting approval, the district manager will be guided by such factors as the oxygen balance and detonation temperature of the explosive materials to be used, the conditions under which blasting is to be performed, and the applicability of the explosive materials and blasting units to the material to be mined. The operator shall be provided with a written list of mandatory conditions for using each explosive material and unit.

Explanation: This draft revision addresses the problem of nonavailability of permissible explosives and blasting units that are capable of doing the job in noncoal mines, and the continuous introduction of new explosive products. These new products may not have been intended for use in underground atmospheres containing methane gas. It also considers the petitions for modification which have been granted. All of the essential requirements provided by standards 57.21-96 and 57.21-97 have been incorporated into this revision and clarified. Approval by State Inspectors was omitted due to cancellation of State Plans under the 1977 Act.

## CATEGORY III

## EXPLOSIVES

57.21-96 Mandatory. The Mine Safety and Health Administration and the State Inspector of Mines, in granting approval referred to in standard ¶ 57.21-95, shall provide the operator with a written list of conditions for using the specific explosives covered by the approval and adapted to the mining operation.

This is not the symbol in CFR 30, nor is it from the flexible disk being maintained in Denver.

57.21-96 Deleted

Explanation: Requirements of this standard were incorporated into draft revised standard 58.21-695.

## CATEGORY III

## EXPLOSIVES

57.21-97 Mandatory. Blasts in gassy mines shall be initiated electrically, and multiple-shot blasts shall be initiated only with millisecond-delay detonators. Permissible blasting units of capacity suitable for the number of holes in a round to be blasted shall be used unless the round is fired from the surface when all men are out of the mine.

57.21-97 Deleted

Explanation: Requirements of this standard were incorporated into revised revised standard 58.21-695.

CATEGORY III

58.21-698

## EXPLOSIVES

57.21-98 Mandatory. Boreholes shall be stemmed as prescribed for the explosives used.

58.21-698 (U) Draft Revision

Boreholes shall be stemmed with a flame resistant material in accordance with 30 CFR Part 16, unless blasting is done from the surface when all persons are out of the mine.

Explanation: This revision provides specifications for stemming material.

## CATEGORY III

## 58.21-699

## EXPLOSIVES

57.21-99 Mandatory. When blasting on shift, examinations for methane shall be made immediately before firing each shot or round, and again before other work is performed. Examinations shall be made by competent persons with devices approved by the Secretary for detecting methane.

57.21-100 Mandatory. Shots or rounds shall not be fired in places where 1.0 percent or more of methane is present at a point no less than 12 inches from the back, face, or rib. Tests to determine the presence of methane shall be made by a competent person with devices approved by the Secretary for detecting methane.

58.21-699 (U) Draft Revision

When blasting on shift, tests for methane shall be made by a person designated by the mine operator before firing each shot or round, and after blasting before other work is performed. Shots or rounds shall not be fired in places where 1.0 percent or more methane is present.

Explanation: This revision is to combine and clarify the requirements of standards 57.21-99 and 57.21-100. The safety provided by these standards has not been changed.

## CATEGORY III

## EXPLOSIVES

57.21-100 Mandatory. Shots or rounds shall not be fired in places where 1.0 percent or more of methane is present at a point no less than 12 inches from the back, face, or rib. Tests to determine the presence of methane shall be made by a competent person with devices approved by the Secretary for detecting methane.

57.21-100 Deleted

Explanation: Requirements of this standard were incorporated in draft revised standard 58.21-699.

## CATEGORY III

## EXPLOSIVES

57.21-101 Mandatory. Shots and rounds shall be fired by competent persons.

57.21-101 Deleted

Explanation: The hazards which this standard addresses are covered by existing standard 57.6-90.

CATEGORY

STANDARD IV

58.21-710

FIRE PREVENTION AND CONTROL

58.21-710 (U) Draft Revision

Smoking or open flame shall not be permitted in any place until such place has been tested and found free of methane.

Explanation: The possibility for methane to be released intermittently is unpredictable, thus the need to check for methane and prohibition of smoking when it is found.

The CHAIRMAN. Did you ever file a former protest about it with Mr. David Zegeer?

Mr. BEASON. Yes, sir. In several of the meetings with the Standard Committee, I voiced my opposition.

The CHAIRMAN. And what kind of response did you receive?

Mr. BEASON. I was told that these were not my standards, they were not the committee's standards, that they were MSHA's standards, and to oppose them would just jeopardize our careers.

The CHAIRMAN. Jeopardize your career.

Mr. BEASON. Yes, sir.

The CHAIRMAN. And after you received no reply, did you then write a letter to Mr. McMillan?

Mr. BEASON. Well, what happened there is from the time that it went in for the final, we were never given copies of what was done. I got a telephone call from a gentleman here in Washington who was aware of the changes.

The CHAIRMAN. Well, did you get a response at some time?

Mr. BEASON. Yes. He sent me a copy of what they changed, and I wrote to Zegeer about those changes.

The CHAIRMAN. And was it satisfactory?

Mr. BEASON. I never got a response from Zegeer. The only thing I heard from that point on was my supervisor told me that I did not have to worry about it; I was no longer on the Standard Committee.

The CHAIRMAN. Well, can you tell us where the regulation stands today?

Mr. BEASON. I have no idea.

The CHAIRMAN. And do you know whether other recommendations of the committee are being deleted or watered-down?

Mr. BEASON. There are a number of them that I discussed in the memo to Mr. Zegeer. One is intake and return airdrifts in a gassy mine.

The CHAIRMAN. Well, there are other important ones, as I understand, that you believe are also being watered-down; is that correct?

Mr. BEASON. Yes, sir. That is one of them along with others.

The CHAIRMAN. And if you believe that those are watered-down, will the lives of miners be endangered?

Mr. BEASON. I believe if they pass, it will not only allow it to happen; it will contribute to fatalities.

[The memos referred to follows:]

U. S. Department of Labor
Mine Safety and Health Administration
1745 West 1700 South
Salt Lake City UT 84104

MEMORANDUM FOR: David A. Zegeer, Assistant Secretary
U.S. Department of Labor
Arlington, VA

THROUGH: Roy Bernard, Administrator, Metal and Nonmetal
Arlington, VA

FROM: Ronald L. Beason, Member Gassy Mine Standard Committee
Moab Field Office

SUBJECT: Gassy Standard Changes dated June 12, 1986

This memo is in response to the changes made in the gassy standards, after the gassy standard committee presented the document to Washington. Changes made by Washington are as follows:

SUBMITTED: 57.32202 Separation of Intake and Return Air

The main intake and return air currents in mines shall be in separate shafts, slopes and drifts, except:
(a) Where multiple shafts are used for ventilation and a single shaft contains a curtain wall or partition for separation of air currents. Such wall or partition shall be constructed of reinforced concrete or equivalent, and provided with pressure-relief device; or
(b) During development of openings to the surface:
(1) Ventilation tubing may be used for separation of main air currents in the same opening. Flexible ventilaiton tubing shall be constructed on noncombustible material.
(2) Only development related to making a primary ventilation connection may be performed beyond 250 feet of the shaft.

CHANGES: 57.32120 Separation of Intake and Return Air (I-A, I-C, II-A, III and V-A Mines.

When single mine openings are used for main intake and return airways, such airways shall be separated by a partition provided with pressure-relief devices, or by rigid ventilation tubing. Partitions and ventilation tubing shall be substantially constructed of noncombustible material.

Reasons for Objections

The change in the standard allows an operator to ventilate a gassy mine by using a vent tube in the shaft or drift, for the entire life of the mine. Such use of vent tubing has in the past proved disasterous--(1-2--see below). Many men have died of asphyxiation, when the vent tubing, ventilation was destroyed by a methane ignition or fire (1-2). To provide an adequate dependable ventilation system, separate shafts, drifts, stopes, has always been safety suggestions, especially in gassy mines (3).

REFERENCES

1. Final report of major mine explosion disaster, Cane Creek Mine, Potash Division, Texasgulf Sulphur Company, August 27, 1963 Report RECOMMENDATIONS, Page 28.

A suitable dividing partition should be installed in the shaft, and the main fan proposed for use in ventilating the mine should be installed on the surface and put into operation.

A second opening to the underground workings should be provided as soon as possible, so that sufficient airways and a second escapeway are available.

2. Final Report on Major Mine Fire, Belle Isle Salt Mine, March 5, 1968, Report, Page 44-CONCLUSION:

The lack of a separate shaft, which could have provided the trapped men with another way out of the mine.

It must be noted that these inadequacies had been called to the attention of the company management nearly 6 months before the disastrous fire occurred. Had a second shaft been begun then, it could not have been completed in time to have had any effect on the outcome of the fire. The shaft had not, however, been started at the time the disaster occurred.

3. Miner's Circular 55, Bureau of Mines Suggested Safe Practices-Fires, Gasses and Ventilation, Page 117.

The use of one shaft to ventilate a gassy mine leaves a sole point of pressure release, should an explosion in a mine occur. A direct path of dynamic pressure in any large explosion can expect to destroy all fixtures in a single shaft. Should an operator have an escape shaft-(bullet type cage), the forces expected would destroy the escape shaft and man cage--(4-5)

REFERENCES

4. Final Report of Mine Explosion of Mine Explosion Disaster, Belle Isle Mine Cargill, Inc., June 8, 1979, Page 52, Explosion Forces.

5. Final Report of Major Mine Explosion Disaster, Cane Creek Mine, Potash Division, August 27, 1963, Page 25-FORCES.

MSHA's RESPONSE TO COMMENTORS

57.32120 Separation of Intake and Return Air (I-A, I-C, II-A, III, and V-A Mines).

This final rule deletes existing 57.21022 and revises existing 57.212023, which requires that when single shafts are used for intake and return, the partition shall be constructed of reinforced concrete or equivalent and provided with pressure relief devices. The final rule incorporates these provisions, provides greater flexibility, and applies to all mine openings used for ventilation.

The proposed rule required separate shafts for intake and return airways. A commentor requested that the final rule exclude existing single shafts used for intake and return airways. Current safety standards do not preclude the use of single shafts for separation of intake and return airways in coal mines.

OBJECTION TO COMMENT: The statutory Provision 75-1705 through 75-1707 states:
STATUTORY PROVISIONS--When new coal mines are opened, not more than 20 miners shall be allowed at any one time in any mine until a connection has been made between the the mine openings, and such connections shall be made as soon as possible.

75.1706 Final Mining of Pillars

STATUTORY PROVISIONS--When only one mine opening is available, owing to final mining of pillars, note more than 20 miners shall be allowed in such mine at any ont time, and the distance between the mine opening and working face shall not exceed 500 feet.

75.1707 Escapeways, intake air, separation from belt and trolley haulage entries.

STATUTORY PROVISIONS--In the case of all coal mines opened on or after March 30, 1970, and in the case of all new working sections opened on or after such date in mines opened prior to such date, the escapeway required by this section to be ventilated with intake air shall be separated from the belt and trolley haulage entries of the mine for the entire length of such entries to the beginning of each working section, except that the Secretary or his authorized representative may permit such separation to be extended for a greater or lesser distance so long as such extension does not pose a hazard to the miners.

These statutory provisions effectively excludes any coal mine from using one drift, shaft, and incline opening, as suggested in the MSHA Reply to Commentors.

The mining industry never advocated such a standard, nor, was any version of this final publication ever suggested.

### REFERENCE

American Mining Congress (AMC), Recommendations, September 12, 1985
Page 67:

QUOTE:

57.38203 Separation of intake and return air--The main intake and return air currents in mines shall be in separate shafts, slopes and drifts, except--

(a) Where multiple shafts are used for ventilation and a single shaft contains a curtain wall or partition for separation or air currents. Such wall or partition shall be constructed or reinforced concrete or equivalent, and provided with pressure-relief devices; or:

(b) During development of openings to the surface --

(1) Rigid ventilation tubing *** used in shafts and slopes shall be constructed of noncombustible material. *** Rigid Ventilation tubing used in drifts shall have a flame spread rating of 25 or less ***.

(2) Only development related to making a primary ventilation connection may be performed beyond 250 feet of the shaft.

RATIONALE: The use of rigid ducting with a flame spread rating of 25 or less on a primary ventilation correction is no more hazardous than for its subsequent use in later development connections. It is also much lighter and, thus, adds to the safety of those handling it.

SUBMITTED: 57.33212 Installation of Support Equipment:

Battery charging stations, compressor stations and electrical substations shall not be installed underground or within 100 feet of a mine opening.

CHANGED: 57.32129 Installation of Support Equipment (I-C Mines).

Battery charging stations, compressor stations, and electrical substations shall not be installed underground or within 50 feet of a mine opening.

OBJECTION--The change from 100 feet to 50 feet does not take in account the explosibility and density of gilsonite.

Gilsonite mine head frames-bag houses are 100 feet high. Gilsonite is a low density material and produces a fine dust cloud when spilled. Explosive amounts are expected with 50 feet of a spilled area (1). An explosive amount of dust has ignited from some distances from the point of the spill (1-2-3).

### REFERENCES

1. American Gilsonite Explosion, March 7, 1982, Special problems and solutions American Gilsonite, Chevron Resources, Report on gilsonite dust clouds; by Chevron Resources, Lewis Cook, Senior Environmental/Safety Coordinator.

SOLUTION:

Gilsonite is explosive in air when concentrations exceed 0.020 ouces per cubic foot. (0.020 OZ/FT$^{3}$). Occupational nuisance dust surveys have shown concentrations on the order of 10-30 milligrams per cubic meter (10-30 MG/M$^{3}$) in dusty work locations. To compare:

NOTE: 0.020 OZ/FT$^{3}$ = 20200 MG/M$^{3}$

Therefore, explosive gilsonite concentrations will be found around extremely thick clouds of material, such as found at falling streams of material and disturbed piles of material.

Flame areas should avoid high concentration of gilsonite dust by placing air intakes where airborne gilsonite concentrations are well below 0.020 OZ/FT$^{3}$.

OBJECTION CONTINUED

The original installation of furnaces were 50 feet from the bag house. To solve the problem, Chevron engineers moved the furnaces 100 feet from any dust sources, and extended the heater intake 50 feet high. (See attachment No. 1).

### REFERENCES

1. American Gilsonite Explosion and Fire, June 22, 1981.

The spilled gilsonite was ignited by a 120 volt to a H-1-8 conveyor starter motor wire. The victim ran from the fire, each time he stepped, the gilsonite flashed and followed him some 100 feet from the ignition area.

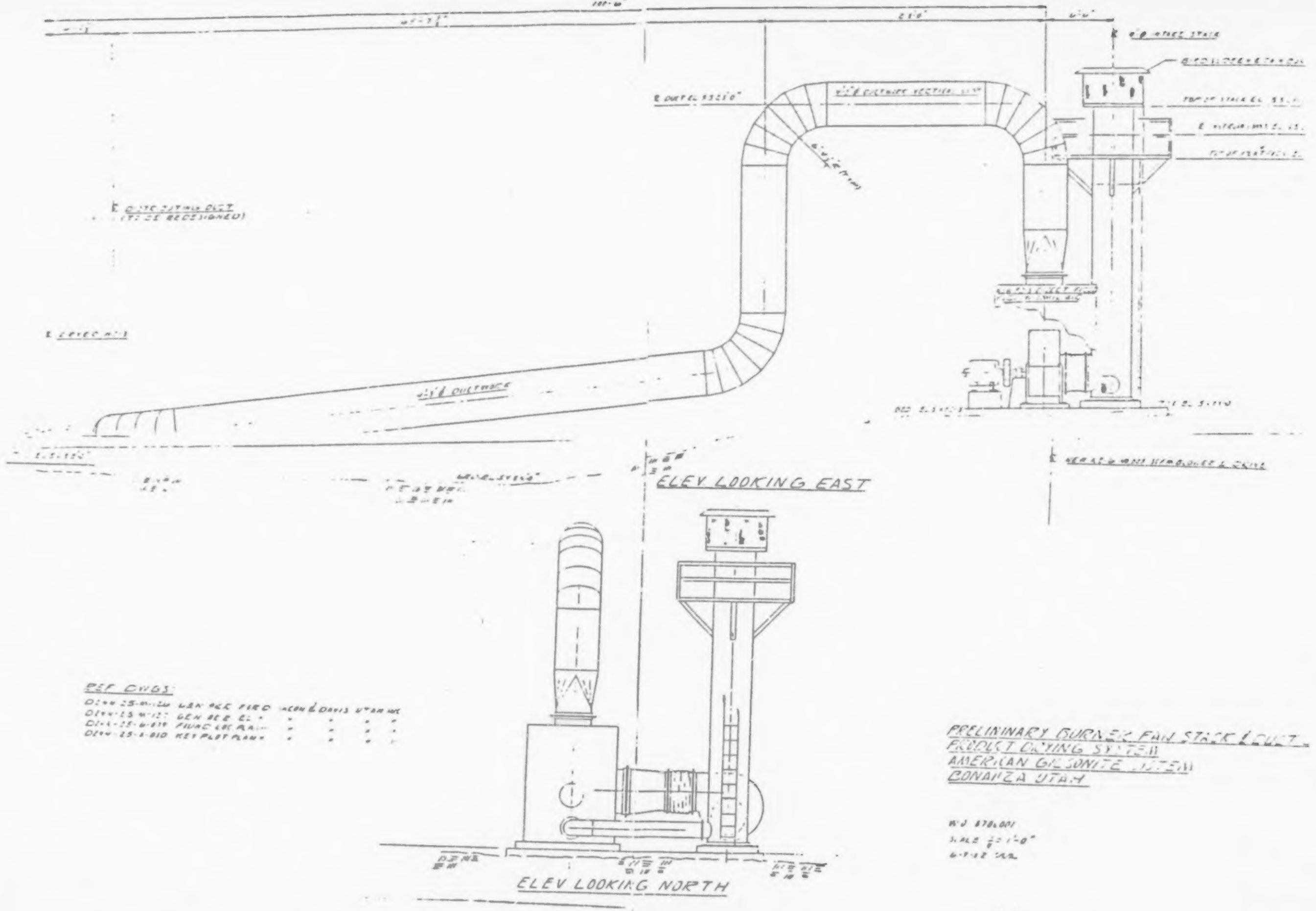
2. An explosion of Gilsonite Dust occurred on November 5, 1953, killed 8 mine employees. An earlier explosion originated on the surface and propagated throughout the length and depth of the mine. The ignition occurred when a gilsonite dust cloud was produced by dumping a care of ore. (3)

3. Miner's Circular 55, Bureau of Mines, Page 114.

SUBMITTED:

57.33604 Explosive Materials and Blasting Units.

Explosive materials and blasting units shall not be used until the mine operator has received written permission from the appropriate district manager for each explosive material and blasting unit to be used. In granting permission, the


ELEV LOOKING EAST
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REF DWGS:
PRELIMINARY BURNER FAN STACK & DUCT
PRODUCT DRYING SYSTEM
AMERICAN GILSONITE SYSTEM
BONANZA UTAH
SCALE $\frac{1}{8}$" = 1'-0"
100'-0"

district manager will be guided by such factors as the oxygen balance and detonation temperatures, the conditions under which blasting is to be performed, and the applicability to the material mined. The mine operator shall comply with all conditions and procedures incorporated into an approval of an explosive material or blasting unit.

This standard was withdrawn in all categories where blasting from the surface was enforced.

MSHA's RESPONSE TO COMMENTORS

57.36106 Explosive Materials and Blasting Units (III Mines).

This final rule revises and combines existing 57.21095, 57.21096 and 57.21097. This final rule was proposed for Subcategories I-A, I-B, I-C, II-A, and V-2 mines, and Category III mines. This standard has been deleted from the final rule for Subcategories I-A, I-C, II-A, II-B and V-A mines, because blasting is conducted with all persons out of the mine. The standard was also deleted from the final rule for Subcategory I-B mines, because the presence of methane gas has not been established.

The final rule applies to Category III mines and provides for blasting on shift with persons underground if the methane level us less than 1.0 percent. This final rule incorporates the safety provisions presently outlined in granted petitions for modification for Category III mines. In addition, current technological changes have been incorporated into this final rule and it reflects current blasting materials and practices used.

OBJECTION The elimination of the rule in gilsonite mines, blasting is conducted from the surface, does not recognize the extreme danger employees encounter when entering a mine after an explosion has occurred. Specific guidelines is a must to protect from un-necessary exposure to hazards after an explosion.

The use of explosives in the gilsonite is not a regular occurrence and specific guidelines are a must! Since infrequent use has contributed to misuse and mishandling of explosives. (1)

The Utah State regulations controlled the type and use of explosives in the gilsonite mines--(no longer enforce). (2) They also required blasting from the surface (3).

FINAL RECOMMENDATIONS-- Precautions should be taken to control any flashes that may cause an explosion in mines, where the material being mined is explosive. Explosives used in the mine should be permissible, and used in a permissible manner.

## REFERENCES

1. Report of Nonfatal Mine Explosion Accident, Cottonwood No. 1, Ziegler Chemical and Mineral Corporation, Ouray, Uintah County, Utah, September 12, 1983

2. General Safety Orders, Gilsonite Mines, Industrial Commission of Utah, Page 12, Section XVII Explosives C.

3. C-5 Blasting After all men are out of the mine.

SUBMITTED: 57.31217 Abandoned areas.
Abandoned areas shall be:

(a) Sealed; or

(b) Ventilated, barricaded and posted against unauthorized entry.

Changed standard was eliminated in I-A and II-A, Mine changed in III Mines.

CHANGED: 57.32127 Crosscuts before abandonment (III Mines).

A positive means of ventilating faces shall be provided before workings are abandoned in unsealed areas, unless crosscuts are provided within 30 feet of the face.

OBJECTIONS: 1. The standard was removed from all other categories except III mines.

The expected methane liberation in several of the categories would allow enormous volumes of methane to exist in these unventilated areas--reference 1-2; and should be ventilated.

QUOTE: The best and surest precautions against accidents from ignitions of explosion mixtures of methane is by ventilation (1).

2. The standard allows the category III Mines, to extend a stub drift 30 feet without ventilation seals or barricades. The category III Mines include Trona, where expected methane liberation from the roof and floor, could possible initiate the drift with methane. (1)

The unventilated stub drift can accumulate methane in the amounts expressed by the following: 30 feet deep x 10 feet high x 20 feet wide = 6,000 cubic feet. Assuming that a ten percent build up of methane occurred. The explosion forces could be expected to injure and kill a number of persons. The expected explosion forces assuming a constant volume is equal to (14.7 psi = 1 atmosphere). Explosion forces = 7.6 atmospheric or 112 psi x 6,000 = 672,000 PSI; or enough pressure to effect 1-1/2 miles of drift or the entire mine--(3-4).

The numerous ezperiments have demonstrated that small quantity of 150 cubic feet of an explosive amount of methane can initiate an explosion and traverse an entire mine. (4)

Recent experimental work at Lake Link, Bruston, 1986, indicate a colume of 10 percent Stoichlometric methane in air in typical explosion at 10 x 14 x 30 foot drift indicated that forces at the face were 20 P.S.I.

The flame wave travel was figured at a factor of 5. The expected flame travel from a 30 foot drift would extend down the travel way 150 feet before the flame would be consumed.

REFERENCES

1. Methane Obsorption in Oil Shale - and it's potential Mine Hazard, Report of Invenstigation/8243-1977.

2. THe Explosion Hazard in Mining Information Report, 119-1981.

3. Method of Calculating Fire and Explosion Hazards. Prepared by the American Institute of American Engineer, Mr. Tunke, Head of Hazard Research Center, New Jersey.

4. Explosion and Fire in Bituminous COal Mines, Miner's Circular 50, Bureau of Mines, Page 69.

MSHA's RESPONSE TO COMMENTORS

57.32127 Crosscuts Before Abandonment (III Mines).

This final rule revises existing standard 57.21051. It requires that a positive means of ventilating faces in abandoned unsealed areas be provided unless crosscuts are provided within 30 feet of the faces. A Commentor expressed concern that compliance with this standard would leave some abandoned areas unventilated. The final rule specifically requires that abandoned faces be ventilated or that crosscuts be provided within 30 feet of abandoned faces. The application of the standard is to the entire mine. Editorial changes were made in the final rule and the distance for crosscuts of 18 feet in the proposed rule has been increased to 30 feet in the final rule to accomodate advances in mining technology and equipment.

OBJECTION: The standard applies to Category III Mines, and is inconsistent with other categories and expected methane liberation. Category III Mines have historically liberated large amounts of methane.

MSHA REPLY TO COMMENTORS: 57.33117 Pressure-relief systems (I-C Mines).

This final rule is a new standard for Subcatefory I-C mines. It requires pressure-relief vents on all dust handling and drying equipment and on facilities housing such equipment. Commentors recommended that the title of the standard be changed from "Pressure-relief vents" to Pressure-relief systems". THey also suggested alternate language to allow weak-walls or explosion suppression systems. Weak-Walls are considered to be an integral part of a pressure-relief system. The final rule adopts these changes.

OBJECTION TO COMMENT: The reference to weak-walls being considered an integral part of a pressure relief system is not consistent with explosive venting. A definition of a weak-wall was not included, nor, is weak-wall included in the following listed publications.

The weak-wall referred to in standard No. 57.21-20E: is designed to protect the fan from explosion forces. The intent of this standard was to protect the employees by directing the explosion forces away and into a harmless area. An effective explosive vent releases at a very low pressure rise within a structure.

REFERENCES

1. National Fire Protection Association Explosion Prevention Systems, NFPA-69-1978-69-1.

2. Standard for the Prevention of Dust Explosion in Coal Preparation of DUst Explosion in Coal Preparation Plants, 653-1, NFPA-No. 653-1971.

3. Explosion Guide for Venting, NFPA-68-1978.

4. Pressure Relieving Capacties of Diaphragms and Other Devices For Venting Dust Explosions, Report of Investigation, 463, United States Department of the Interior, Bureau of Mines.

STANDARD CHANGE: 57.21046 Crosscut Intervals.

This existing standard specifies maximum intervals for crosscuts. A commentor for Category III mines stated that the standard was necessary to maintain adequate ventilation at the face. However, the final rules for air flow and air quality requirements adequately address the provisions of this existing standard.

OBJECTION: The elimination of the crosscut intervals, seriously diminishes the safety in the gassy mines. Although, the cross cut intervals were extended to 250 to 500 feet in affected categories, to allow for improved technology. THe safety involved when considering the air flow and air quality may be good when everything is running normally. Unfortunately from mine disasters in the past has shown the unexpected should be expected. The contaminated air should be removed into the return air as soon as possible.

The elimination of cross-cut intervals would allow operators unlimited drift lengths. The cross cut removal does present further safety problems such as fire on equipment, along with combustible material mined; such as oil shale, which could be easily ignited. Also, what about injured person or persons attempting to evacuate the area without alternative escape routes.

Standard No. 57.4461, recognizes the problem of gasoline engines used underground and requires crosscuts not to extend beyond a 100 feet. How much more should MSHA recognize the necessity of crosscuts when considering methane combustible ore bodies and high production mines.

The mine rescue in case of a disaster is seriously impared due to the maintaining fres-air bases due to the lengths of drifts.

SUBMITTED: 57.32207 Booster Fans

(a) Booster fans shall be permissible and be:

(1) Deenergized automatically when methane levels reach 1.0 percent at the fan:

(2) Provided with an automatic signal device to give warning or alarm when the air volume delivered by the fan stops or slows. The signal device shall be located so that it can be seen or heard by a responsible person, designated by the mine oeprator at all times when persons are underground;

(3) Equipped with a device that automatically deenergizes the power in the effected workings should the fan slow or stop; and

(4) Equipped with two sets of controls capable of starting and stopping the fan. One set shall be located at the fan and a second set shall be located at another accessible remote location.

(b) Booster fan installations except for booster fans installed in ducts, shall be:

(1) Provided with doors which open automatically when all fans in the installation stop. The doors shall be large enough so that when open at least 50 percent of the airway is available for air flow; and

(2) Provided with an air lock when passage through the fan bulkhead is necessary.

CHANGED: 57.32111 Booster Fans (I-A, I-B, III and V-A Mines).

(a) Booster fans shall be approved in accordance with 30 CFR Part 18, and:

(1) Provided with an automatic signal device to give an alarm when the air volume delivered by the fan stops or when methane levels reach 1.0 percent at the fan. The signal device shall be lcoated so that it can be seen or heard by a responsible person designated by the mine operator.

(2) Equipped with a device that automatically deenergizes power in affected workings should the fan stop; and

(3) Equipped with starting and stopping controls located at the fan and at another accessible remote location.

(b) Booster fan installations, except for booster fans installed in ducts, shall be:

(1) Provided with doors which open automatically when all fans in the installation stop. The doors shall be large enough so that when open, at least 50 percent of the airway is available for air flow; and

(2) Provided with an air lock when passage through the fan bulkhead is necessary.

75.32112 Booster fans (II-A Mines).

(a) Booster fans shall be approved in accordance with 30 CFR Part 18, and:

(1) Provided with an automatic signal device to give an alarm when the air volume delivered by the fan stops or when methane levels reach 0.5 percent at the fan. THe signal device shall be located so that it can be seen or heard by a responsible person designated by the mine oeprator;

(2) Equipped with a device that automatically deenergizes power in affected workings should the fan stop; and

(3) Equipped with starting and stopping controls lcoated at the fan and at another accessible remote location.

(b) Booster fan installations, except for booster fans installed in ducts, shall be:

(1) Provided with doors which open automatically when all fans in the installation stop. The doors shall be large enough so that when open, at least 50 percent of the airway is provided for air flow; and

(2) Provided with an air lock when passage through the fan bulkhead is necessary.

OBJECTION: The booster fan is normally installed in an isolated area of the return air coarse off a split of air or bleeder. To remove the requirement to automatically shut the fan off, when the methane reaches one percent, with the assumption that it is a judgemental issue, fails to take into consideration of where these fans would be located.

Should the alarm set at .5 to 1 percent warn the mine of methane build-up an employee would have to travel to the fan location in which to determine the severity. By the time such employee reached the fan (which could be as high as thirty minutes to an hour) the methane could have already reached an explosion amount and ignited.

Therefore, to remove this requirement, imperils not only the employees required to check the area, but the whole section of the mine this fan installation provides ventilation.

Althougn, booster fans are not widely used; when they are used, it is due to a difficulty to maintain air velocities necessary to safely ventilate an area of the mine, which could not be maintained under normal circumstances. Examples, would be over caved areas in pillar pulling retreat mines. Bleeders or areas where the drift sizes are reduced; or an obstruction where higher pressure is necessary.

The existance of 1 percent methane would indicate an enormous amounts of methane produced by a cave in, bleeders, or blow-out. The automatic shut off at 1 percent, presents a 1-5 safety factor eliminated under the present rule changes.

THerefore, it is essential to safe operation of such fans that the automatic sut off be reinstated!

MSHA's RESPONSE TO COMMENTORS: 57.32111 and 57.32112 Booster Fans (I-A, I-B, II-A, III, and V-A Mines).

Commentors for Subcategory I-A mines suggested language that would permit the use of portable fans to break methane stratification and that these fans should not be deenergized when methane reaches 1.0 percent methane. In the interest of safety, auxiliary fans and other equipment must be deenergized when methane reaches 1.0 percent. For this reason, these comments were not incorporated into the final rule.

57.32113 and 57.32114 Auxiliary fans (I-A, I-C, II-A, III, and V-A mines).

Commentors for Subcategory II-A mines recommended raising the level for deenergizing the booster fan from 0.5 to 1.0 percent methane at the fan. In consideration of air flow and methane action level requirements, deenergizing a booster or main fan should be a judgemental issue to be determined following an evaluation of circumstances and conditions at each mine. THerefore, the automatic deenergization requirement has been deleted from the final rule.

## OBJECTION TO MSHA REPLY

The reason given by the MSHA comment to deenergize the small auxiliary stratisification fan at 1 percent methane, and then allowing the larger booster and main fan operating at 1 percent methane was inconsistent with safe operating procedures.

The standard is not consistent with other action levels where equipment must be deenergized. SUch as face drill, continuous miners, etc. Although, the booster and main fan is much more vulnerable if high concentrations of methane are encountered, and extremely important to the miners.

See standards 57.32137, 57.32143, 57.32144, 57.33102 and otheres are action levels requiring deenergizing of power.

The coal standard 75.302-4-E (expands on the statutory provision 75-302), requires that fans be deenergized at 1 percent methane. Main fans ventilate the entire miners with high volumes of air and the existence of one percent methane represents air initiation of methane in the mine.

FINAL STATEMENTS

Sir, the listed standards along with the elimination of the required cross-cut intervals have in my opinion seriously endangered the safety of the miners in the gassy metal and nonmetal mines.

The standard committee spent 4 years in study, hearings, consultation with experts, and company officials, to reduce unnecessary burdensome standards, an yet, provides safety for the miners.

A $200,000 dollar study was granted to the Golder Associates (Contract No. J0100060) to help in this process.

The existing standards although, somewhat burdensome were effective in that a gassy mine, after being classified had not had any serious injuries due to an explosion of methane. This in itself reflects the extent of the safety provided.

My hope is that you will use your influence to prevent the destruction of the submitted standards which if continued in their present form WILL CREATE AND CONTRIBUTE TO THE DISASTER, DEATHS OF MINERS and destruction of mining property.

Yours truly,

Ronald L Beason

Ronald L. Beason
Moab, Utah

cc: Robert Hilderbrandt
W. C. Gardner
H. G. Plimpton

Standard Committee

Bill Donnelly, Chairman and now retired
Bernie McGuire, Solicitor
Bill Bruce, Ventilation
Larry Feeney, Supervisor

P-496 190 899

Gassy
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MOAB, UT 84532
(City, State, and ZIP Code)

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U. S. Department of Labor

January 12, 1987

MEMORANDUM FOR: Alan C. McMillan, Acting Assistant Secretary
Arlington, VA

FROM: Ronald L. Beason, Safety and Health Mine Inspector
Moab, Utah Field Office

SUBJECT: Gassy Standard Changes dated June 12, 1986

Sir, the attached is a copy of a memorandum written to David Zegeer.

The memorandum was due to changes which I feel seriously endangers the nations miners. Also, the changes made could possibly be in violation of the directives to reduce un-necessary standards and yet upgrade the safety provisions (Proposal-Rule page 23612, June 4, 1985). The changes were never proposed and interested individuals, companys and unions, were not given the opportunity to comment on the deletion of these standards.

I have not received an acknowledgment of the previous memo, therefore, I'm sending this memo directly to you.

Your consideraiton in this manner would be appreciated.

Ronald L Beason
Ronald L. Beason

Attachment

**U.S. Department of Labor**

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

JAN 22 1987

MEMORANDUM FOR RONALD L. BEASON
Safety and Health Mine Inspector

THROUGH: ROY L. BERNARD RLB
Administrator, Metal and Nonmetal
Mine Safety and Health

FROM: ALAN C. McMILLAN
Deputy Assistant Secretary for
Mine Safety and Health

SUBJECT: Gassy Standard Changes Dated
June 12, 1986

Thank you for your memorandum of January 12, with attachments, commenting on the above subject. I have taken the liberty of forwarding the package on to Patricia W. Silvey, Chief, Office of Standards, Regulations and Variances for review.

**U. S. Department of Labor**

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

Official Business
Penalty for Private Use, $300

Mr. Ronald L. Beason
Safety and Health Mine Inspector
Mine Safety and Health Administration
1745 West 1700 South
Salt Lake City, UT  84104

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**U. S. Department of Labor**

Mine Safety and Health Administration
1745 West 1700 South
Salt Lake City, UT 84104

FEBRUARY 19, 1987

MEMORANDUM: Gassy Standard Committee Members

FROM: Ronald L. Beason, Safety and Health Mine Inspector RLB
Moab, Utah

SUBJECT: Reply to Gassy Mine Standards
Dated June 12, 1986

The attached is a reply from Roy L. Bernard, concerning the memo I wrote to Mr. Zegeer, with later copies to Alan C. McMillian.

I have taken the liberty to write in some comments:

NOTE: A) The most serious change is the separation of intake and return airways.

B) The answer did not address the fact that the separation of intake and return airways, was never published for comment nor had industry suggested this change.

C) The committee is credited with these changed standards.

This is for your information.

cc: M. Nichols
H. Dolan
H. G. Plimpton
Bernie McGuire
Bill Bruce
Larry Feeney
Bud Narramore

**U.S. Department of Labor**

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

11 FEB 1987

MEMORANDUM FOR RONALD L. BEASON
Metal and Nonmetal Mine
Safety and Health Inspector

FROM: ROY L. BERNARD
Administrator, Metal and Nonmetal
Mine Safety and Health

SUBJECT: Changes to Gassy Mine Standards
dated June 12, 1986

Thank you for your comments regarding MSHA's rulemaking activity for Subpart T, Safety Standards for Methane in Metal and Nonmetal Mines. I have attached a copy of the results of a technical review of the issues raised by your comments. I am satisfied that these issues have been appropriately resolved in the rule now pending final review.

Attachment

cc: Alan C. McMillan

RESPONSE TO ISSUES RAISED RE: JUNE 12, 1986 DRAFT OF FINAL RULE FOR METHANE STANDARDS.

Issue #1. The commenter objects to the language of Section 57.22215, Separation of Intake and Return Air, and contends that the use of ventilation tubing in a single mine opening provides insufficient airways to safely ventilate a gassy mine. He also contends that the standard does not recognize the need for a second opening to the surface to provide an escapeway and a secondary point of pressure release for the forces created by an underground explosion. He uses the Cane Creek disaster of August 27, 1963 in Moab, Utah and the Belle Isle mine explosion of June 8, 1979 near Franklin, Louisiana to support his contentions.

The standard allows for the separation of intake and return air in a single mine opening by partitions or ~~rigid ventilation~~ tubing.

Rigid Tubing is Not A Separation Sufficient To Reduce $CH_4$ Unless a second-air way is provided to Run The exhaust-air.

The partitions or tubing must be constructed of noncombustible materials. This language recognizes advancements in technology which are currently in use at one trona mine in proposed Category III, one inactive oil shale mine in proposed Subcategory I-B, and several presently nongassy mines which are proposed for classification in Category IV. Regulations applicable to underground coal mines also allow for the separation of intake and return air in a single mine opening. The key phrase in this standard, which may have been misunderstood by the commenter, is "single mine openings." The language of the rule does not allow, nor imply, that total ventilation control throughout the mine can be achieved with ventilation tubing in the shaft or drift. This standard must be viewed in conjunction with the remainder of the final rule which contains requirements for air flow, monitoring for methane, actions levels, etc.

In the Cane Creek explosion, gases liberated during blasting were drawn into an underground shop where ignition sources were present. The Belle Isle mine explosion occurred when an outburst of gas, liberated by blasting, was ignited by sources in the active workings. Neither of these explosions can be attributed to the ~~handling of intake and return air~~ in a single mine opening. Both instances, however, serve as evidence of the destructive forces generated in the mine opening when an explosion occurs and the need for secondary escapeways from the mine.

Referring to later explosion June 8, 1979
Not in the deaths, Fire Belle Isle March 5, 1968
The Reason was Because intake + Return airways were Not provided
Thus The Methane Inundated The Mine Back To The ignition Source (Texas Gulf

No metal and nonmetal rulemaking effort has ever addressed the issue of providing sufficient numbers of mine openings to assure that pressures ~~generated by an explosion would not damage a shaft~~. If this effort was made, each mine would have to be evaluated individually based upon the configuration of the mine. The resulting requirements would then become immediately outdated as the mining front was advanced and the mine size increased, so it would be nearly impossible to develop such requirements.

Explosions destroy vent Tubing Thus CO, CO2 kill Miners. The purpose
OF VENTS IN CURTAIN walls is To Release The explosive pressures - vent
Tubing would be emmidiatly destroyed - Thus distroying ALL ventilation
into the mine.

The commenter is indeed correct in his contention that secondary openings to the surface are necessary for escape purposes. This protection is provided in Subpart J, Travelways and Escapeways, Section 57.11050. It was never intended for inclusion in Subpart T, Methane Standards. In most metal and nonmetal mines, these additional openings to the surface are also incorporated into the mine ventilation scheme; therefore, intake and return air passes through separate openings. The Agency recognizes that these separate openings for intake and return air are usually the most efficient and effective way to ventilate an underground metal or nonmetal mine but does not intend that a ventilation requirement for substantial separation of fresh air and gas-laden air be used to provide this escape capability.

In summary, the majority of the commenters examples and opinions on this issue concern escapeways which are not appropriately addressed by methane ventilation standards.

↓ TRUE They are Not appropriatly - addressed

**Issue #2.** The commenter objects to the language of Section 57.22224, Auxiliary Equipment Stations, for gilsonite mines because the restriction for placement of potential ignition sources was changed from "within 100 feet of a mine opening" to "within 50 feet of a mine opening". He contends that this change does not recognize the explosibility and density of gilsonite. He substantiates his concerns by citing hazards which could exist in a mill area and an accident that occurred near the mine opening when an ore car was dumped and a spill occurred.

Gilsonite in the Mine, Same As in the Mill -

The standard prohibits the installation of battery charging stations, compressor stations and electrical substations in the underground portion of the mine or within 50 feet of the mine opening. No reference is made to mill installations.

Unsafe in Mill - Also - Mine The Mill Also transports ore by air lift lines - and Fills - ore Bins.

The explosibility and density of gilsonite dust was recognized when the language of the standard was changed. Also considered was the type of dust-generating activities which occur underground and on the surface within 50 feet of the mine opening, with particular emphasis placed on the ore handling practices at the mine opening. Gilsonite ore is ~~no longer hauled~~

GILSONITE IS LOADED INTO HAULAGE TRUCKS FROM ORE BINS IMMEDIATLY

~~to the surface~~ in cars and dumped as it was in the 1953 accident

OVER THE MINE SHAFT - FREQUENT SPILLS ACCURE WHEN THE BINS FIL

cited by the commenter. It is now transported by an airstream

AND OVER FLOW OR BREAKS IN THE VACCUM LINE OCCURES

inside a pipe which substantially minimizes the dust accumulations at the mine opening. THEN LOADED INTO TRUCKS FROM ORE BINS.

Additionally, the size of the restricted area was reduced from 100 feet to 50 feet to be consistent with other requirements applicable to these Gilsonite mines. Section 57.22104, Open Flames, prohibits flame-producing activities such as welding and cutting within ~~50 feet of the mine opening unless all~~ persons are out of the mine and the opening is covered. This requirement is

NOTE - THE SHAFT IS COVERED AND ALL MEN OUT FROM THE MINE

consistent with Ut~~ah State regulations~~ for gilsonite mines. It

NOT TRUE

would be inappropriate to allow these types of definite ignition sources to be located 50 feet from the mine opening, and then

THIS IGNITION SOURCE IS ONLY AFTER ALL MEN ARE OUT FROM

require an electrical installation, which may never generate a

UNDERGROUND AND THE SHAFT IS COVERED. ~~[illegible]~~

flame, to be 100 feet from the same opening.

**Issue #3.** The commenter objects to deletion of the application of Section 57.22606, Explosive Materials and Blasting Units, to gilsonite mines. He acknowledges that blasting is not regularly performed in these mines and that Section 57.22602 would require blasts to be initiated from the surface with all persons out of the mine. He contends however, that this concept does not provide protection for persons that may be assigned to reenter the mine after an explosion and is concerned that the sporadic use of these explosive materials may contribute to misuse and mishandling hazards. He suggests that all explosive material be permissible and be used in a permissible manner.

Product fracture is achieved in gilsonite mines with pneumatic chipping hammers and blasting is, therefore, rarely performed. Final rule Section 57.22602 requires that these rare blasting activities be initiated from the surface with all persons out of the mine and any connecting mine. It also provides for an evaluation of the blast site by a competent person before reentry is permitted.

The Agency recognizes that hazardous conditions may be encountered upon reentry to a mine following an explosion. Extreme care must be exercised at this time whether the ignition was caused by explosive materials, blasting units, open flames, nonpermissible equipment, faulty electrical cables or any other source. Protection is provided on these rare occasions by the requirements of Sections 103 (J) and (K) of the Act which assures
were ineffect when MSHA And Co personel were killed
appropriate control in emergencies and by the mine rescue
West Virginia
standards of Part 49. The intent of the Subpart T methane standards is to achieve safety for the miner by preventing exposure to the hazards at the work site. When a blast is to be initiated in a mine where volatile dust and methane is present,

there can be no greater safety provided for the on-site miner than to require his or her evacuation. Once miner evacuation has been achieved, any additional requirement, such as the use of permissible explosives, would then be directed at the protection of property. Since all operating underground gilsonite mines are located in the state of Utah, it is important to note that
Section XVII (C)(5) of the ~~Utah State mining law states~~ "The
UTAH STATE LAW IS NO LONGER ENFORCED the STATE OF Utah
blasting of rock in gilsonite mines will be permitted only when
NO LONGER HAS SUCH Regulations. These quoted ARE Old-STATE
using permissible powder. All shots must be fired electrically
Rules
after all men are out of the mine."

The concept of personnel evacuation for blasting is an alternative compliance provision contained in existing Section 57.21097 which also allows persons to remain underground during blasting provided that the blast is initiated electrically with an approved blasting unit. The use of permissible explosive materials and approved ~~electrical initiating systems does~~ not
~~assure that an explosion will not occur.~~ Evacuation of miners
Will surely Reduce The Frequency + Probability,
provides the margin of safety for which the mine operator and MSHA is charged responsibility.

The issue of misuse or mishandling of explosive materials due to infrequent use is addressed by Part 48 Training regulations and the competency requirements of existing standards in Subpart E, Explosives.

**Issue #4.** The commenter expresses three objections to final rule Section 57.22222, Crosscuts Before Abandonment, applicable to Category III mines. He contends that:

1. The standard should also be applied to Subcategories I-A and II-A, deep oil shale and domal salts with outbursts respectively, because large volumes of methane are expected to be liberated in those mines;

2. The crosscuts required by the standard should be within 18 feet of the face rather than 30 feet so that a lesser amount of methane could accumulate; and

3. The restricted application of the standard and the revised crosscut spacings were made in Washington and did not reflect the requirements of the draft submitted by the Gassy mines committee.

Standard 57.22222 provides for ventilation of faces in abandoned, unsealed areas unless crosscuts are provided within 30 feet of the face. In effect, it prohibits the mining of stub drifts more than 30 feet in length when an area is to be abandoned and remain unsealed.

Application of this standard to oil shale and domal salt mines is inappropriate because of the height of the mining faces. No safety is achieved by limiting the length of a stub drift to 18 feet when the height of the drift approaches 90 feet in many instances. Drift heights in Category III mines are regulated by the thickness of the ore seam, which is generally 10 feet. Additionally, methane liberation in Subcategory I-A and II-A mines is anticipated to occur during blasting and little or no liberation occurs after the mining cycle has been completed.

WAS Not INcluded in Comment,

TRUE WAS Not INcluded in Comment - ?

These mines are required to initiate blasts from the surface with all persons out of the mine. Atmospheric monitoring systems are also required to provide information which will indicate that it is safe to reenter the mine. If any of the areas in question were determined to be unventilated areas, existing Section 57.8528, applicable to all mines, would require sealing or barricading and posting. The weekly testing requirements of Sections 57.22228 and 57.22229 also specify that these areas be regularly monitored. Although none of these individual requirements specifically address the accumulation of methane in a 30 foot stub drift, their combined effect negates the need for application of this standard to Subcategory I-A and II-A mines.

The revised restriction of stub drift lengths from 18 feet to 30 feet for Category III mines was made in recognition of the fact that these areas are limited to approximately 10 feet in height by the thickness of the ore deposit which minimizes the volume of methane accumulation. The revision also recognizes the increased size of cutter bars used to undercut the ore in the room and pillar mining method used at trona mines. Section 57.22219 requires that air which has passed these unsealed, abandoned or inactive portions of Category III mines be tested daily for methane if 0.25 percent or more methane is present. The Agency contends that these combined requirements afford the appropriate protection against accumulation of methane in 30 foot stub drifts.

THIS WAS IN abandoned headings NOT WORKING FACES,

The commenter is in error when contending that the restricted application of this standard to Category III (trona) mines only and the revised crosscut requirements were

CHANGED SO MUCH Can't determine what mines ARE involved;

"Washington" changes made subsequent to submission of the committee draft. The proposed rule for Gassy Mines appeared in the FEDERAL REGISTER on Tuesday, June 4, 1985 (50 FR 23612). The "Crosscuts before abandonment" standard, Section 57.36222, was applicable to Category III mines only in this proposed rule, which was developed by the committee. The commenter had advocated broader application of the standard during committee meetings but his peers on the committee did not concur for the NOT SURE - same reasons listed above. The revision to stub drift lengths was also addressed by the committee during 1985 but subsequent to publication of the proposed rule.

This entire issue is inappropriately titled ~~"Gassy Standard Changes Dated June 12, 1986~~". It constitutes a revisit of old opinions which were addressed during earlier NOT TRUE stages of the rulemaking effort.

Issue #5. The commenter expresses concern regarding the preamble to Section 57.22313, Explosion Protection Systems, applicable to gilsonite mines. He contends that the reference to weak-walls may imply that they are acceptable as compliance and is concerned that they will not provide sufficient protection for miners in areas where volatile gilsonite dust is being transported or processed. Injury to persons could occur if the pressure required to rupture a weak-wall exceeded the pressure which could injure persons in the area.

The standard requires pressure relief systems or explosion suppression systems on handling and processing equipment or facilities for gilsonite. There is no reference to weak-walls made in the standard. Vents, however, are required if the pressure relief alternative is selected for compliance purposes. These vents must be installed in a manner which will direct forces away from persons should an explosion occur. The preamble language acknowledged that weak-walls may be an integral part of a pressure relief system but the standard contains no requirement regarding the direction of forces if they are used.

It is the intent of the standard to provide protection to miners from a potential dust ignition and explosion. Any integral portion of a pressure relief or explosion suppression system would be required to contribute to this goal. The commenters concern has been addressed by revising the preamble to clarify that weak-walls may be used as part of a pressure relief system as long as the pressure required to overcome them would not cause injury to persons the system was designed to protect.

True

**Issue #6.** The commenter expresses concern regarding the deletion of existing Section 57.21046, Crosscut Intervals. He contends that a minimum interval is necessary to remove contaminated air into the return airstream as quickly as possible and to provide escape routes in the event of a fire.

Existing Section 57.21046 was proposed for deletion in the proposed rule for Gassy Mines published in the FEDERAL REGISTER

on Tuesday, June 4, 1985 (50 FR 23612). The decision was reached
by the committee, of which the commenter was a member. The
Not True This was changed, Then defended - by [illegible]
decision for deletion was based on the presence of requirements
with-out descussion or comment - Objected at the time but was
for minimum air flow and air quality standards. These factors,
unable to change since the delition was done after the package was submitted
in conjunction with action level requirements continue to provide
And came out on the proposal - was told while working on costs of
the safety addressed by provisions of the existing standard.
The change - then nothing could be done.
Fire and escape hazards are appropriately addressed in Subparts C and J. The development of crosscuts will continue to be a practice in multiple-entry and room and pillar mines because of other mining needs which they serve. Restrictions related to their intervals, however, are not needed for ventilation requirements which address the liberation of methane.

-A

NOT TRUE -

**Issue #7.** The commenter objects to deletion of the automatic deenergization requirement for booster fans when the methane level reaches one percent. He contends that the shutdown must be immediate and that an alarm, followed by an evaluation and possible manual shutdown does not address the immediacy of action necessary due to the remote location of the booster fan.

Section 57.22207, Booster Fans, is applicable to Subcategory I-A, II-A, V-A and Category III mines. It specifies the safety requirements for these fans which actually provide the same function as main fans but are located underground. The proposed rule for booster fans required automatic deenergization when methane concentrations reach one percent at the fan. This requirement has been deleted from the final rule because it could create a hazard to miners in many instances.

The commenter correctly states that booster fans are not widely used by the affected industry. He contends, however, that booster fans are normally installed in an isolated area of the return aircourse. This assumption is incorrect. Booster fan locations vary widely from intake to return aircourses and from remote locations to locations which are near active work sites.

WHERE!

He presents a hypothetical scenario where the need for automatic deenergization is valid because of the remote location of the fan and the rapid accumulation of methane near the fan. In this instance, it is reasonable to assume that a prudent mine operator would evaluate the remoteness of the fan location and the proximity of a methane liberation point and would then either relocate the fan or equip it with automatic deenergization capability absent the regulation.

IF ALL operators were Prudent - We wouldn't need any Regulations, But History proves That wrong!

NOT TRUE IN MOST CASES

An equally likely scenario exists when a booster fan, regardless of location, is operating in a methane concentration of one percent and is successfully controlling the accumulation of gas in a working section of the mine by keeping the concentration below the lower explosive limit. In this instance, the standard requires that an alarm be sounded. The subsequent search for the source of methane could then be conducted as the fan continues to control the accumulation. Once the source has been determined, miners in the affected area could be evacuated prior to shutoff of the fan while concentrations are being controlled. If the fan had deenergized automatically in this instance, all ventilation control in the affected area would be

PERMISSIBLE Equipment including FANS ARE NOT designed to operate IN explosive ATTMOSPHERES - But to prevent AN explosion until
ch TIME AS IT CAN be Shut-down - ALL OTHER-Standards Reflect This PREMISE - COAL & M.N.M.

interrupted and explosive concentrations could occur in the work place prior to the evacuation of miners.

## SUMMARY

The commenter is recognized as having considerable personal experience in many of the category and subcategory mines addressed by these methane standards and has exhibited a genuine concern for miners' safety in his work and his memorandum. He has, however, in his comments on the June 12, 1986 draft:

(1) Failed to consider the safety provisions of other standards contained in this final rule when objecting to a specific deletion or revision;

(2) Inappropriately labeled several revisions as "changes made by Washington" when they were actually committee changes which did not concur with his personal opinions: and

Do you agree with that statement — Interesting.

(3) Advocated the use of methane control standards in this final rule to achieve compliance with fire and escapeway concerns which are already addressed in other subparts.

The CHAIRMAN. Thank you.

These are questions from Senator Hatch. He asks, "I understand that the gassy mine standards you have commented on affect gilsonite, as well as some of the other types of mines; is that correct?"

Mr. BEASON. Yes, sir.

The CHAIRMAN. "And is gilsonite, which is used in paints and pigments, a highly-explosive substance?"

Mr. BEASON. Yes, sir.

The CHAIRMAN. And he asks, "I understand Utah is one of the few, if not the only, States where gilsonite is mined. Since 1953, there have been nine reported deaths associated with the mining of gilsonite. What steps can MSHA take to ensure greater safety for the workers where gilsonite is being mined?"

Mr. BEASON. What we did there is, one of the companies there that is a large company had four explosions in their mills and I believe one in the mine, that killed some people and virtually destroyed one of their men in the mill. So they had an outline a safety program on how they were going to prevent a reoccurence installing flammable intakes and furnaces and that type of thing at least 100 feet away from any of the bens and any of the places where gilsonite could spill.

Washington, I understand, changed that. Now, today, for today's operators of the gilsonite mines, in this generation it may not be a problem. The next generation, it very well could be.

The CHAIRMAN. Okay.

I want to thank all of the witnesses today for their testimony. Many came even though they risked their careers by doing so, but they came because the Mine Safety and Health Administration is risking the lives of miners every working day.

I share with these witnesses the pledge that we will work to fix this agency so that no miner in this country will die because the government has failed to do its job.

The testimony we have heard has been technical and it has been specific, and taken as whole, the record of this agency is shameful and tragic. The specific nature of the testimony is especially compelling because we now know the identities of miners who have died because this agency has not carried out its duties. We even know the names of some of the people responsible for undermining the work of those who tried to bring safe practices to the mines.

To Mrs. Myers, who lost her husband in the Grundy Mine, we are committed to reforming this agency.

To Mr. Simpson, who lost his son, we are committed to the reform of this agency.

To those who labor today in the mines, who know that their lives are often needlessly risked, let it be known that the Senate of the United States knows what is happening, and we are committed to correcting what we have seen. We will call on the agency to explain itself tomorrow and to work with this Committee to correct the derelictions that we have discovered without delay.

This Committee stands in recess.

[Whereupon, at 12:45 p.m., the Committee was adjourned, to reconvene Thursday, March 12, 1987, at 10:00 a.m.]

# OVERSIGHT OF THE MINE SAFETY AND HEALTH ADMINISTRATION

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THURSDAY, MARCH 12, 1987

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
*Washington, DC.*

The committee convened, pursuant to notice, at 10:01 a.m., in room SD-430, Dirksen Senate Office Building, Senator Edward M. Kennedy (chairman) presiding.

Present: Senators Kennedy, Metzenbaum, Simon, Stafford, and Hatch.

### OPENING STATEMENT OF SENATOR KENNEDY

The CHAIRMAN. We will come to order.

Our first witness this morning is Mr. Alan McMillan, Deputy Assistant Secretary for Mine Safety and Health.

Mr. McMillan, we want to welcome you here. I want to indicate at the outset of the hearing that you have been extremely cooperative with this Committee making material that is relevant to our investigation available to us. We want to express for the record our very sincere appreciation of that cooperation. That is the way the system is supposed to work, although it does not always work that way. As one who has been around here for a long time and seen that sometimes it does and sometimes it does not, we want to express our appreciation to you for maintaining the integrity of the system.

First, however, we will receive the opening statement of Senator Metzenbaum.

### OPENING STATEMENT OF SENATOR HOWARD METZENBAUM

Senator METZENBAUM. The opening sentence of the Mine Safety and Health Act declares unequivocally that "The first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner." But the recent record of the Mine Safety and Health Administration makes a mockery of that principle.

Yesterday's dramatic testimony regarding MSHA's refusal to develop or enforce meaningful health standards is only the latest evidence that the Reagan administration does not share the law's concern for the health and safety of miners.

At last September's oversight hearing on MSHA I documented the agency's dismal record in the areas of effective mine inspection and accurate injury reporting.

The latest results of GAO's continuing investigation in these areas are now available. The numbers speak for themselves. The GAO found that for 1986, the average penalty assessed for failure to report injuries was on $27 per violation and a mere $94 per mine. The largest fine assessed to a mine in 1986 was less than $3000.

Total fines for the year for underreporting injuries in 17,000 mines nationwide were only $31,000. This paltry amount compares to numerous fines in the hundreds of thousands of dollars assessed by OSHA in 1986 against individual companies for record keeping violations.

The attitudes of miners and mine operators are even more revealing; 100% of the labor organizations and 44% of the organizations representing mining operators surveyed by GAO stated their belief that current MSHA fines do not deter underreporting of injuries. In short, the current system is a joke and much higher fines, especially for repeat offenders, are warranted.

The GAO continuing investigation also uncovered a dramatic disparity in injury reporting between small mines—those employing fewer than 50 workers—and large mines. The GAO figures are startling. Small mines employed only 5% of the mine workforce but accounted for 45% of mine fatalities.

The high fatality rate compares to an unbelievably low rate of reported injuries. Small mines on average reported only 3 injuries for every fatality, whereas large mines reported 51 injuries for every fatality, which is 17 times the injury report rate of small mines.

The conclusion is painfully obvious—small mine operators are ignoring their legal requirements by significantly underreporting injuries in the mines and MSHA is letting them get away with it.

The administration's performance has been shameful. It must act aggressively to protect miners. Lives are at stake.

The CHAIRMAN. Mr. McMillan, if you would be kind enough to introduce the others at the table, and then we will ask you to proceed with your prepared testimony. I usually wait until testimony is finished before I begin questioning, but I will have a few questions as you run through your testimony, and then I will come to more extensive questions when you are done. I think that makes for a more complete record.

So we will recognize you, and if you would be good enough to introduce your associates.

## STATEMENT OF ALAN C. McMILLAN, DEPUTY ASSISTANT SECRETARY FOR MINE SAFETY AND HEALTH, U.S. DEPARTMENT OF LABOR, ACCOMPANIED BY ED CLAIR, ASSOCIATE SOLICITOR FOR MINE SAFETY AND HEALTH, U.S. DEPARTMENT OF LABOR; TOM SHEPICH, DEPUTY ASSISTANT SECRETARY, MINE SAFETY AND HEALTH ADMINISTRATION; ROY BERNARD, ADMINISTRATOR, METAL AND NON-METAL; KEN KATEN, SPECIAL ASSISTANT, MSHA, AND JERRY SPICER, ADMINISTRATOR, COAL MINE SAFETY AND HEALTH, MSHA

Mr. MCMILLAN. Thank you, Mr. Chairman.

On my immediate left, I have with me Ed Clair. Ed joined the Solicitor's Office in the Division of Mine Safety and Health in MSHA's predecessor agency, the Department of the Interior, in February of 1974. In February of this year, Mr. Clair was named Associate Solicitor for Mine Safety and Health in the Department of Labor.

On my immediate right is Tom Shepich. Tom began his Federal career with the Bureau of Mines, Department of the Interior, in 1966. He has been with MSHA and its predecessor agencies, serving in various capacities ever since that time. In 1981, he was appointed Deputy Assistant Secretary for MSHA.

Moving beyond that, Mr. Chairman, you asked, I believe on Monday by letter, that I have some other individuals available today, and I would like to introduce them as well.

On my far left is Roy Bernard. Roy has worked for MSHA for the past 28 years, holding many positions from mine inspector to his present position, which is the Administrator, for Metal and Non-Metal mine Safety and Health, MSHA.

On my very far right is Mr. Ken Katen. Ken came to MSHA in June of 1984 as a Special Assistant to Assistant Secretary David Zegeer, from the Diamond Shamrock Coal Company, where he was a professional master-degreed mining engineer and supervisor of their Mining Planning Department for their national operations.

Next to Ken, on my right also, is Jerry Spicer. Jerry joined the Bureau of Mines in 1969, and has served in numerous positions from mine inspector to his present position as Administrator for Coal Mine Safety and Health, MSHA.

The CHAIRMAN. Thank you very much.

Gentlemen, we welcome you as well.

Mr. MCMILLAN. Mr. Chairman and distinguished members of the Committee, I appreciate the opportunity to appear before you to testify on oversight of the Federal Mine Safety and Health Administration. I have a statement which I would like to read.

Since this is my first appearance before your Committee, I would briefly like to discuss with you my plans to manage the business of MSHA while I am responsible for enforcing the Federal Mine Safety and Health Act of 1977.

As you are aware, I am a career Federal employee with the majority of my experience being in the Department of Labor. I have been with the Occupational Safety and Health Administration, OSHA, for approximately 15 years, in various capacities.

During two of my assignments—one as Regional Administrator in Chicago, second as Regional Administrator in Atlanta—I have met and worked with some of MSHA's personnel on both internal and external DOL matters. In all of my dealings with MSHA, I have found its personnel to be dedicated safety and health professionals.

Secretary Brock and I recognize and appreciate the continuing efforts that you, Mr. Chairman, Senator Hatch, and other members of Congress who have worked over the years to assure that the mine workers of this nation have a safe and healthful working environment.

The concerns that you have exhibited have contributed substantially to the improved working conditions and practices in today's mines.

However, I believe we are all committed to the proposition that additional improvements must be made. I wish to assure you that we will continue to work with you and all other interested parties to see that our activities reflect and contribute to our mutual purpose—to improve the safety and health of this nation's miners.

One of the first actions I took in assuming this position was to conduct a meeting with MSHA's key district and headquarters personnel. My purpose was twofold—first, to let them know that during my interim tenure here, we will vigorously carry out the mission of the agency. We will perform the mandatory inspections, and we will continue to emphasize the quality of those inspections. We will respond to those issues which arise, and after thoughtful airing of all views, we will make reasoned decisions. In sum, we will carry out and effectively administer the requirements of the Mine Act.

Secondly, having worked in a management capacity away from headquarters for a number of years, I felt it was important to let our field staff know that we in the Labor Department recognize that their operations, their activities, in the field are the heart and soul of this organization.

The enforcement and the administration of the Mine Act can only be as effective as the front-line personnel. The Congress, through enactment of the Mine Act, has given us the tools to improve safety and health. It is our responsibility to coordinate and use those tools effectively from headquarters to the field.

During my past eight weeks with MSHA, I have also made a concerted effort to meet and communicate with representatives of various major unions such as the United Mine Workers of America, the United Steelworkers of America, and the International Union of Operating Engineers, as well as various management associations such as the American Mining Congress, the Bituminous Coal Operators Association, and the National Stone Association. I believe these meetings are essential to maintaining a meaningful dialogue with our constituents and to deal with any problems or concerns at the earliest possible stage with as much relevant information as possible. As we perform our activities and deliberate the issues, we will be able to ensure that we are aware of the concerns of our various constituents.

However, as I have said to MSHA's personnel, as well as to the members of the mining community, labor and management, with whom I have met, I do not intend to make consensus decisions. I will expect to hear and intend to consider all aspects of each issue, but as I view MSHA's role as the advocate of miners' safety and health, any decision made will be solely to the benefit of the workers we protect.

One of my first priorities upon accepting this assignment was to review many of the concerns expressed by the Congress and by others. My review of the issues, as well as my discussions with MSHA staff, have indicated that some of the concerns expressed have merit, and action is underway to address them.

In response to concerns raised about MSHA's statistical chargeability of fatalities, I have reviewed the facts surrounding the unfortunate death of Mr. Bruce Ballard and have determined that it should have been charged to the mining industry and counted in MSHA's 1985 fatality statistics.

In addition, I have established a task force comprised of MSHA, the Office of the Solicitor, Bureau of Labor Statistics and the National Institute for Occupational. Safety and Health, NIOSH, to review the role, the structure and the guidelines of the Fatality Review Committee.

I felt this task force was needed as the committee has been in operation for many years, during which there have been legislative as well as administrative changes. The task force is to report its findings and recommendations to me by June 1, 1987. At that time, I will inform this Committee of any additional actions MSHA deems necessary with respect to the Fatality Review Committee. I would like inserted in the record two exhibits, one on the Ballard decision, and one on the Task Force for the Fatality Review Committee, along with my statement.

The CHAIRMAN. One of the points you raise in your testimony is that: "The Committee has also raised concerns that will require more information and study before we can determine what, if any, corrective action needs to be taken."

I just wonder why we need to have more review, more studies. Why do we need more reviews? It seems to me that corrective action should be taken. I think if you look at some of the issues that were raised yesterday during the course of that hearing or if you visited with some of those people who are either in the Department now or who have been in the Department, that you could take corrective action now, rather than doing additional reviews. Part of the problem at MSHA is that you conduct reviews, and then reviews on reviews, and additional studies on that. And I will ask the Secretary to take a look at the testimony from yesterday's hearing and move forward with agency reform. I do not know whether we need another agency review.

Mr. MCMILLAN. Mr. Chairman, I could not agree with you more. The specific issue that I made mention of is simply one small committee which is going to be reviewed because its rules procedures and structure dates back into the Seventies.

But I have already moved on a number of issues, and I agree with you that some do not require any further review at all.

In the remainder of my statement, I will speak to some of those actions on which we are moving ahead.

The CHAIRMAN. That is fine.

Mr. MCMILLAN. I have also reviewed the process for the referral of cases for potential criminal prosecution. As these cases can result in the most severe penalties contained in the Mine Act, I was concerned that any reference to mitigating circumstances might lead to confusion. Consequently, based on my discussion with MSHA staff, Office of the Solicitor, and Department of Justice personnel, I have already issued a memorandum restating MSHA's procedures for referring a possible criminal violation of the Mine Act to the Department of Justice. The memorandum does in fact supersede those instructions which were issued in March of 1986. And I will include that memorandum with my statement.

Also in the enforcement area, I have taken the unprecedented step of imposing a $1,000 per day civil penalty on a mine operator for non-compliance with a valid order. In this case, the miner operator refused to comply with an order to reinstate a miner in a discrimination case, even after the Federal Mine Safety and Health Review Commission twice ordered the operator to temporarily reinstate the claimant. It was only after the daily penalty was imposed that the case was settled on terms which were favorable to the miner.

This Committee, as well as others, has also raised concerns in areas that will require more information and study before we can determine if any corrective action needs to be taken and what that action is. The regulatory review project falls into this category.

Questions have also been raised about MSHA's ability to effectively manage its program. This issue is extremely complex and has significant implications to the credibility of the agency and, therefore, to the safety and health of miners.

Toward this end, I plan to initiate an agency accountability system—a system or program that will be national in scope but intimately involve the district, the subdistrict and even the field supervisor personnel. The basic purpose and the sole thrust of this activity will be to identify any flaws or potential inconsistencies, or even individual irregularities in management, in procedures or in activities, so that we can take whatever corrective action is needed in a timely manner.

The CHAIRMAN. Well, this is certainly a step in the right direction. Our Committee is going to watch and make sure that your words are backed up with actions, because that is what the situation requires.

Mr. MCMILLAN. And I support that, and we will give you the feedback on what we do put in place.

Last, there are some areas in which MSHA has effectively already responded to concerns expressed by members of Congress and others. For example, MSHA is now conducting four annual inspections of all underground mines and twice-yearly inspections of all surface operations.

Also as a result of the review of the concerns raised about the integrity of MSHA's accident and injury data, steps have been taken to assure that the industry is aware of the importance MSHA places on accurate data and reporting. As Secretary Brock has previously indicated in January of 1986, MSHA issued new instructions to the inspection personnel on accident and injury reporting and reminded the mining industry of their responsibilities in this regard.

Further, as Secretary Brock promised in a letter to Senator Metzenbaum dated September the 9th of 1986, we are fulfilling our commitment to increase our inspection work force. By March the 1st, using the three mechanisms outlined in the Secretary's letter, we had increased our inspection work force by 160 individuals.

Moreover, there has been a downward trend in the accident and injury rates. We will work to improve this trend further. It is important, however, to realize there will be some fluctuations from any one time period to another. As MSHA carries out its various activities emanating from the Mine Act, we will continue to review our programs to determine if there are any other actions we can or need to take which will result in additional safety and health improvements.

In summary, MSHA will continue to administer the provisions of the Mine Act effectively and fairly. We welcome constructive critiques and oversight as they provide an additional perspective to review our policies and programs to assure they continue to be effective. As these criticisms are considered—and I assure you they will be—any decisions we make will be balanced and weighed in terms of our ultimate responsibilities—the improvement of the safety and health conditions in the nation's mines.

Thank you, Mr. Chairman. I will be glad to respond to any questions.

[Information supplied for the record follows:]

**U.S. Department of Labor**

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, VA 22203-1984

APR 16 1987

The Honorable Edward M. Kennedy
Chairman, Committee on Labor
and Human Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As requested by your staff, I am returning my corrected transcript. The corrections of Messrs. Clair and Spicer have been made on the same copy.

During the course of the oversight hearing, we exchanged thoughts on several areas of concern to you, other members of the Committee, as well as many of us in the Department of Labor and Mine Safety and Health Administration (MSHA). Specifically, you raised questions about MSHA's regulatory process, including the content of rules currently under development, expressed concern about MSHA's procedures for investigating multiple fatality/disasters, conducting internal reviews and the reporting structure for special investigations, and questioned MSHA's ability to effectively manage its programs. I have taken steps which are designed to ensure that in each of these areas MSHA's activities and decisions are reasoned and promote the safety and health of the Nation's miners.

As I indicated during the hearings, criticisms regarding the direction of the Agency's proposed revisions to safety and health rules persuaded me that review of this important effort was warranted. Moreover, I wanted to assure myself that the rules being developed did in fact improve the safety and health protections afforded miners.

To accomplish this review, I have asked Agency technical personnel, including those involved in the initial rules committees, to identify for me the safety and health issues which need to be addressed. Since the hearing, persons involved in the roof control, ventilation, explosives and electrical projects have met to review the latest revisions in light of concerns raised both internally and externally. Review is also underway of the Agency's standards concerning gassy metal and nonmetal mines, as well as proposals relating to the approval of mine plans and pattern of violations.

As the projects are at various steps in the rulemaking process, the approach to making any changes will vary. Regardless of the approach, however, the Agency's mission of protecting and improving miner safety and health will guide our actions.

Regarding the questions that have been raised about MSHA's ability to manage its programs, this subject has significant implications for the credibility of MSHA and, therefore, for the safety and health of the miners. Since stating that I would initiate an agency accountability system, I have appointed a task force chaired by the Director of Program Policy Evaluation and comprised of representatives of both the metal/nonmetal and coal organizations.

I have met with the task force and instructed them to develop options and procedures for the system and report their recommendations to me by May 15, 1987.

I have also appointed similar task forces to review the special investigations program and the multiple fatality/disaster investigations function. Each task force is comprised of personnel from headquarters and district offices of the coal and metal/nonmetal organizations, but is chaired by a representative from another segment of MSHA's organization.

The task force on special investigations has been directed to identify any existing inconsistencies in the organizational or reporting structure and provide recommendations for improvement. The task force on multiple fatalities/disaster investigations has been instructed to specifically address the issues of which personnel should be assigned fatal accident investigation duties and under what guidelines. I have personally met with both committees to emphasize the importance of their responsibilities and have asked them to provide their findings and recommendations expeditiously.

During the hearings, I also stated I would like to respond to the Committee on a ventilation survey completed by MSHA's Division of Coal Mine Safety in 1983, the record of District 5's Special Investigation Unit, the award nomination and performance appraisal of Mr. Michael Finnie, and MSHA's pursuit of jurisdiction at the M & W Coal Company in Tennessee. I have enclosed that information and request that it be made part of the record. I have also enclosed a copy of my response to Mr. J. Davitt McAteer's letter to Secretary Brock requesting an Advisory Committee on the regulatory review project which I would also like included in the record.

Last, during the course of the hearings, there were serious allegations raised which encompassed a wide range of issues including possible conflict of interest and nonsupport of MSHA's inspection personnel. I am committed to assuring that the public's confidence in MSHA's credibility, as an Agency dedicated to vigorously enforcing the Mine Act, is well placed. Therefore, I have asked the Inspector General of the Department of Labor to conduct a special investigation of the personal allegations made to determine their validity. I have enclosed a copy of my letter requesting a thorough and timely special investigation.

To reiterate the concluding remarks of my statement, Mr. Chairman, I welcome and appreciate the oversight of MSHA's activities by your committee as it does provide important information and an additional perspective from which MSHA's programs and policies can be reviewed. In examining the issues raised, please be assured that any solutions proposed to the problems identified will be designed for the benefit of the Nation's miners.

Sincerely,

Alan C. McMillan
Deputy Assistant Secretary for
  Mine Safety and Health

Enclosures

Exhibit 2

MAR 0 5 1987

MEMORANDUM FOR MADISON MCCULLOCH
Director of Technical Support

FROM: ALAN C. MCMILLAN
Deputy Assistant Secretary for
Mine Safety and Health

SUBJECT: Chargeability of Death of Bruce S. Ballard

Among the items for me to consider when I was appointed Deputy Assistant Secretary was a review of the decision of the Fatality Review Committee regarding the death of Bruce Ballard at the Consolidation Coal Company, Buchanan No. 1 Mine on September 20, 1985. Although there has been no formal review process established for the Committee, the delegation of powers by the Secretary of Labor carries with it a responsibility for review by the Assistant Secretary of all Mine Safety and Health Administration (MSHA) matters. Moreover there is precedent for review by the Assistant Secretary of decisions made by the Fatality Review Committee.

My review of the case is limited to the facts which were presented to the Committee for its deliberations. I have not requested anyone to supply additional facts for the record. Bruce Ballard had worked for the Consolidation Coal Company for five years, including seven months at the Buchanan No. 1 Mine, and three months as a roof bolter operator. On the day of his death he had worked the entire shift without incident. He worked with another roof bolter, Curtis Cruey. At the end of the shift Mr. Cruey backed the roof bolter into a crosscut and turned the electrical power off. He left Mr. Ballard and started out of the mine. Moments later Kenneth Blevins discovered Mr. Ballard on his back near the right controls of the roof bolter. He was found with no signs of life. CPR was administered but to no avail. He was 25 years of age at the time of his death.

The death occurred at approximately 7:40 a.m. An MSHA inspector, arrived at the mine at approximately 8:05 a.m., and was notified of the occurrence. Mr. Ballard was brought to the surface at 8:15 a.m. and transported to the hospital. At 8:40 a.m. the inspector entered the mine with the mine foreman and the chief electrician.

The roof bolter, the cable and the circuit breaker were checked and no defects were found. An MSHA electrical inspector, Thomas Barnett arrived on the section at 9:45 a.m. He examined the bolter and made some tests. No violations of the regulations were observed.

A full and complete autopsy was performed on September 21, 1985, by the Commonwealth of Virginia. Abrasions (burns) were found on the right hand and the right elbow. The medical examiner unequivocably concluded that the cause of death was electrocution. His autopsy revealed no other potential cause of death. On September 26, 1985, the Commonwealth issued a report stating negative findings for alcohol and other drugs. On October 29, 1985, the Commonwealth issued a report on an examination of skin from the burned area of Mr. Ballard's right elbow. The result of that test concluded that, "No metals were found on the burned area of the skin section that would indicate contact with an electrical conductor".

An interoffice communication of Consolidation Coal Company, dated, November 15, 1985, states that on October 30, 1985, the roof bolter was thoroughly examined and no defects were found.

The Department of Defense, Armed Forces Institute of Pathology, was requested to review the case. On January 14, 1986, its report was issued to the Commonwealth. The report stated that circumstantial evidence favored electrocution, but it acknowledged that no source of electricity was found. The evidence was not conclusive as to whether the burns were thermally or electrically induced. The report concluded that the cause and manner of death was "undetermined."

In summary, the roof bolter had been operated for the shift prior to the death. At the end of the shift it had been turned off. Shortly thereafter, Mr. Ballard was found dead near the controls. The MSHA inspection, begun about an hour after the death, revealed no defects on the roof bolter, its trailing cable or circuit breaker. The medical opinion as to cause of death, ranges from undetermined to electrocution.

The Mine Act obligates MSHA to investigate and to obtain and utilize information pertaining to accidents, injuries and illnesses occurring in mines. The definitions and guidelines for obtaining this information are provided in 30 CFR Part 50. Any injury at a mine resulting in the death of a miner must be reported to MSHA. However, over the years, MSHA, and its predecessors The Mining Enforcement and Safety Administration (MESA) and the Bureau of Mines, have excepted as not chargeable, those deaths which result from natural causes and are not mining related. For example, heart attacks resulting from a preexisting condition and not from mining activity are not chargeable.

The guidelines for the Fatality Review Committee are not extensive. To some extent they appear to be derived from various policy memoranda which were developed as new issues were encountered by the Committee. One 1978 policy statement provides: "Unless there is a preponderance of evidence that an injury did not result from the work activity or environment of employment, the injury is considered a work injury." A 1982 policy statement provides: "If there is no preponderance one way or the other, or if no clear evidence is provided, the review committee as a matter of practice comes down on the side of chargeability to the mining industry. The philosophy being that MSHA should not even appear to be avoiding charging fatalities." These guidelines were applied in 1982 by Assistant Secretary Ford B. Ford when he conducted a similar review of a decision of the Fatality Review Committee.

In this case, the most guarded medical statement in the record concluded that the cause of death was "undetermined." The cause of death was not positively identified. There is not a preponderance of evidence for or against a finding of electrocution. Likewise, there is not a preponderance of evidence for or against a finding of death by natural cause. In cases where the evidence does not clearly indicate a cause of death, it is MSHA policy to accept the fatality as chargeable. My conclusions differ from those of the committee. Therefore, I must reverse the decision of the Committee. Please correct the MSHA mining injury records to include the death of Bruce Ballard on September 20, 1985, at the Consolidation Coal Company Buchanan No. 1 Mine.

A review of this case has indicated to me that there is a need to examine the concept and operation of the Fatality Review Committee. It was established in 1973, and its basic charter and guidelines have not been reviewed by the Office of the Assistant Secretary since that time. I am not suggesting that there is anything wrong with the basic concept or with the current guidelines followed by the Committee. However, if the current guidelines are adequate, at the very least, they should be assembled in one concise document available for reference by the Committee and all interested parties.

**U.S. Department of Labor**

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

Exhibit 2

MAR 0 5 1987

Mr. Wade H. Ballard, III
Counsellor at Law
Ballard Law Building
Box 295
Peterstown, West Virginia 24963

Dear Mr. Ballard:

In January of this year, I assumed the responsibilities of Assistant Secretary for the Mine Safety and Health Administration (MSHA) on an interim basis. As part of my overall review of the activities of MSHA, I have reconsidered MSHA's previous determination concerning the circumstances of your son's death on September 20, 1985. As a result of that review, I have instructed the agency's staff to consider the death as work-related and therefore chargeable to the mining industry. My reasons for this determination are discussed below.

The chargeability determination in this case was a difficult one in light of the facts. Experienced medical professionals who reviewed the matter differed in their medical judgments as to the cause of death. Futhermore, a technical examination of the roof bolting machine and the electrical equipment failed to detect any problems or defect that would have caused an electrocution. The Fatality Review Committee established by MSHA to review these matters made what it believed to be a reasonable, good faith judgment that the cause of death could not be determined. Notwithstanding the uncertainty, I believe that a reversal of the previous determination is warranted.

Historically, it has been the practice of the Agency to determine chargeability on the basis of the preponderance of the evidence. Where no clear preponderance exists, the Agency's policy is to resolve such questions by coming down on the side of chargeability. This practice avoids any appearance that MSHA is minimizing the number of fatalities in order to improve the statistics. This practice is, I believe, a sound one which helps to ensure that MSHA's fatality, injury and illness statistics will aid the Agency in measuring its performance and deciding where best to focus its enforcement, education and technical support resources. Chargeability is an administratively created concept designed solely to ensure the consistency of fatality statistics compiled by MSHA. The Agency's determination should not be considered an assignment of legal responsibility.

I regret that MSHA's initial chargeability decision became the subject of controversy and I hope that you and your family were not caused additional pain as a result of the agency's actions. Please accept my personal expression of sympathy in the loss of your son.

Sincerely,

Alan C. McMillan
Deputy Assistant Secretary
for Mine Safety and Health

U.S. Department of Labor

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

Exhibit 3

2 0 FEB 1987

MEMORANDUM FOR ROY L. BERNARD
Administrator for Metal and Nonmetal
Mine Safety and Health

JERRY L. SPICER
Administrator for Coal Mine
Safety and Health

FROM : ALAN C. McMILLAN
Deputy Assistant Secretary for
Mine Safety and Health

SUBJECT: Procedures for referrals to the
Department of Justice

The purpose of this memorandum is to restate the agency procedures for referring a possible criminal violation of the Mine Act to the Department of Justice (DOJ) by the Department of Labor (DOL). This memorandum supersedes the Administrators' memorandum of March 11, 1986.

1. After field investigation and analysis, the District Manager will forward the case to Coal Mine Safety and Health's Office of Technical Compliance and Investigations or Metal/Nonmetal Mine Safety and Health's Office of Special Investigations, as appropriate, for evaluation. This review will be to determine, on a preliminary basis, whether the case file contains evidence to support a potential claim of a willful violation of the Mine Act. In cases involving equipment approvals, Technical Support shall be consulted and concur in the evaluation.

2. Following this review, the case will be referred to the Associate Solicitor for Mine Safety and Health for legal review.

3. If these reviews result in a preliminary determination that the case warrants referral to DOJ for prosecution, the matter will be forwarded to the appropriate Administrator. If the Administrator's case review supports referral, the Deputy Assistant Secretary and the Assistant Secretary will be notified. The case will then be referred either to the local U.S. Attorney's Office or DOJ, as appropriate.

4. In any case where either the Administrator or Associate Solicitor recommends a referral for criminal prosecution, we will continue to seek a review of the case with DOJ. In addition, on a case-by-case basis, certain sensitive cases will

be presented to DOJ for review even though all units in DOL feel that a referral for criminal prosecution is not warranted.

5. In special investigation cases where no action or civil action alone is recommended by the Administrator and the Associate Solicitor, then it will be unnecessary to routinely discuss the case with DOJ for informal prosecutorial declination.

The CHAIRMAN. Very fine. Thank you.

Let me just go back to some parts of the testimony. At the top of page 6, about halfway down the first paragraph, you state, "It is my view that the regulations we develop must be properly balanced to reflect the interests of all our constituents, must encompass modern technology and must be achievable."

As far as I am concerned the miners are your constituents——

Mr. MCMILLAN. Absolutely.

The CHAIRMAN [continuing]. And their safety is your concern. I just felt that was a point that ought to be brought out.

On the bottom of that page, you say, "I can assure the members of the Committee that they will be reasoned, informed, balanced and designed to further the goals of the Mine Act." I think again, the best implementation of the Mine Act is the protection of the miners, and I do not think Congress intended for you to balance their safety, their security, their health, their well-being, against contrary considerations.

Then at the top of page 7 you state, "MSHA is conducting four annual inspections of all underground mines and twice-yearly inspections." I think we want to make sure that those are quality inspections. I think in any fair reading of the testimony yesterday, you would really wonder whether MSHA's inspections are indeed quality inspections. The numbers are important, but numerous inspections will not accomplish anything unless they are quality inspections.

Then you say, "In summary, MSHA will continue to administer the provisions of the Mine Act effectively and fairly." Well, you would have to balance that statement against the testimony that we heard yesterday. We heard that inspectors are taken off inspections for issuing citations, and closure orders are vacated, resulting in fatalities. We had testimony to that effect, and therefore, we are concerned that MSHA is not administering the provisions of the Mine Act effectively and fairly.

I know you have only been in your present position for a short time and in that time you have had to absorb an enormous amount of information about a complex industry. I think some of the steps which you have announced are certainly in the right direction. But I think it is apparent from the testimony of last September and yesterday that there are some very serious problems that need to be addressed.

I would like to address first of all the safety regulations. You say the matter needs review. The matter, as we heard, was thoroughly reviewed four years ago by committees of your best experts. They testified yesterday that they made specific recommendations to upgrade the regulations and had justifications for every single one of them. They testified that other officials of your agency without expertise proceeded to rewrite these proposals in such a way that they provided less safety for miners. And as you know, that is against the law; the Act specifically prohibited it, and I think it is time to cease that kind of activity now. Let us either go back to what your experts proposed, or let us do what Mr. McAteer proposed in his letter to Secretary Brock and appoint an advisory committee to draft regulations that will upgrade and not downgrade the regulations.

Can we do that?

Mr. McMillan. Senator, I think we can do that, and I think at this point in time, it is necessary to do that. As it relates to the issues that I have reviewed from the hearings that were held back in late September, and again, yesterday evening, my briefing of the testimony that was brought out in yesterday's hearing, I believe it is important to make two points. Number one, even though many regulations are involved, none of them have been published as final rules or implemented. They are all at different stages in the rulemaking process. I believe what we should do at this point is to back up and bring back together, if necessary, some small number of MSHA's "technical experts" to take a look at these most recent drafts. By doing this we can make sure that the issues that have been raised by this Committee and others are in fact appropriately addressed. If some of the issues are not valid, we will clearly indicate why they are not. If in fact they are valid we include them in the standards.

There is a downside to doing this, Mr. Chairman, and that is it will slow down the process a little bit. But I am convinced—and I believe you are—that if it requires us slowing them down a little bit to get them right, that is far more important than going forward with the current drafts and then discovering later that they are not the most appropriate regulations and standards to protect miners.

The Chairman. Well, I would think that Mr. McAteer's letter deserves a response. He has not received one yet. This is the letter of December 15th. Are you familiar with the letter? I would be glad to make a copy available.

Mr. McMillan. Please do, sir.

The Chairman. And I am not going to take the time now to review all of the areas, but it reviews the six specific areas that were addressed during the regulatory reform review. They obviously would have a profound and significant and sustained effect on the safety and health conditions in the mines. And it seems to me that he should receive a response to that letter, and I would like assurances that you will raise the issues in that letter with the Secretary. We will raise it with him, too, but I would like to draw the matter to your attention. It is an important letter, and we want to make that a part of the record.

We also want to look at the metal and non-metal safety regulations rewriting process, because we heard compelling testimony yesterday indicating that the same watering-down process is taking place there as well. I do not know what you can tell us about that procedure, or when we are going to get the final proposed regulations in that area.

Mr. McMillan. Mr. Chairman, I would basically say that my earlier response would apply to all of our regulations, both in coal and in metal/non-metal, and that is in fact that we will stop, we will take a look at them; if necessary, we will bring back some of our technical internal expert committee members to take a look at the most recent draft and to get those back on track as quickly as we can so that they will be responsive to the concerns raised.

The Chairman. You see, the problem we have is that you had a series of task forces with very profound expertise that looked at these regulations, studied them, and drafted a new set of regulations—four years ago. And as we saw yesterday—and that record, I think, is powerful—there have just been constant efforts to water them down since that period of time.

The question I would have to ask is why does MSHA have to go back and take another look at regulations that were proposed by individuals from important safety areas who, as I understand, are the best that you had in the Department. Why do you have to spend more time in re-reviewing the re-review? That is something that I just have some difficulty in understanding.

Mr. McMillan. I appreciate that. I did not mean to infer that we would go back to step one and start all over again. I agree with you. A significant amount of work has already been done. What I propose may only involve us going back to the record that was submitted, and sit down and compare it with the most recent proposal, pre-proposal, or wherever each individual one is in their stage of rulemaking.

The Chairman. As I remember the procedure, you can issue the proposed changes of the experts and then you have time for public comment after that. Why it needs more comment within the agency is something that we find difficult to understand, or at least I do.

Mr. Katen. Senator, if I may——

The Chairman. Yes.

Mr. Katen [continuing]. Would like very much to address that issue, if you feel comfortable with that.

The Chairman. Sure.

Mr. Katen. I, on behalf of the former Assistant Secretary, played an integral role in the review of all the safety regulations that we have been developing. Now, Mr. McMillan alluded earlier to some of my credentials, and I think it is important that you and the members of this Committee know something about me, since I did play such a role, and something of my background and experience.

Mr. McMillan mentioned the fact that I am a registered professional engineer, and that I am a graduate engineer with a master's degree in mining engineering. Mining is my profession. I am also a licensed mine foreman, and in my career I have been involved in and responsible for the design, installation, operation and maintenance of a wide variety of activities in underground and surface coal mines and preparation plants throughout this country.

Now, as far as my role in the regulatory review process is concerned, in accordance with the regulatory guidelines that have been statutorily issued and those that pertain to Executive Orders, and my specific instructions from the Assistant Secretary, I was to review the regulations to ensure that they addressed the hazards that were not presently covered in the regulations, to ensure engineering correctness in the promulgation of these standards, and to ensure that they reflected practical application in their day-to-day use and implementation in the mines, and that they be easy to read and understand by the miners and their supervisors so that they could derive the proper safety guidance from them.

In doing so, Mr. Zegeer also directed me to work with the Standards Director to ensure that all the regulatory guidelines were met, not only in the letter of the law but also in the spirit of the law.

Now, there were several changes made as a result of our discussions. These changes, I feel in my professional opinion, are changes that were necessary to provide a more clear guidance to miners and supervisors and to address the hazards that are now present in the existing regulations.

I feel that the situation that we now have, based on my experience and trying to work out some of the difficulties that are contained in the existing language, presents dangerous, and incorrect guidance. The regulations are confusing; they are incomplete, and they do not clearly convey the proper safety guidance to miners and supervisors.

The CHAIRMAN. I do not know whether this is an additional opening statement but we have some specific questions for you, Mr. Katen——

Mr. KATEN. I will be happy to address them, Senator.

The CHAIRMAN [continuing]. Addressing areas that we are interested in. If you have something to say, we can give you limited time to say it, but I have some specific questions.

Mr. KATEN. Thank you.

The CHAIRMAN. First, MSHA organized a very competent committee made up of some of the best engineers in the Department—I do not know how many degrees you have, but as I understand from the make-up of that other committee, they had about as many degrees as you had, and they believed that their proposals were essential to the safety of the miners themselves.

Now, you say you have a lot of degrees, and you differ with some of their proposals. I would like to just perhaps ask you a question or two regarding this difference of opinion.

Did you, shortly after you joined the agency, accompany Mr. Zegeer to a meeting of the Ventilation Committee?

Mr. KATEN. I attended not only that Committee meeting, but I attended probably at least 10 to 20 sessions with the technical people involved with the ventilation regulations.

The CHAIRMAN. Well, at one of those meetings, we heard testimony that either during or after the meeting, you stated that you had an agenda from the Kentucky Coal Mine Operators. Did you make that statement?

Mr. KATEN. No, Senator, I did not make that statement.

The CHAIRMAN. Well, did you have it——

Mr. KATEN. I did have that meeting, and if I may, I would like to characterize my remarks for the Committee.

Mr. Zegeer and I took a very active role and had concerns——

The CHAIRMAN. Well, just before that—and I want to hear you out—but just so the record is clear, did you ever state, either at the meeting or before the meeting or after the meeting, that you had an agenda from the Kentucky Coal Mine Operators?

Mr. KATEN. No, sir, I never made that statement.

The CHAIRMAN. Did you have such an agenda?

Mr. KATEN. No, sir, I never had any such agenda. I did——

The CHAIRMAN. So that statement is inaccurate.

Mr. KATEN. That statement is inaccurate, and I would like to characterize my remarks, if I may, for clarification.

The CHAIRMAN. Yes.

Mr. KATEN. We discussed several bleeder techniques that can be used to drain methane gas from worked out areas of mines. The characterization of my remarks to them was such that I indicated that there were alternative methods that, based on my experience in some of the east Kentucky mines, were equally effective, if not more effective, than the language specified in the existing recommendations.

In fact, I recall there being chalkboard in the room, and Mr. Zegeer and I both took turns at the board to show the members of the committee how these measures could be implemented. I think that, with all due respect to them and their education and experience, their points were valid in a limited sense—but they by no means presented the only alternatives and by no means the safest alternatives to employ in all situations.

The CHAIRMAN. Well, do you believe that as a result of the changes that were made, that they give the miners more protection or less?

Mr. KATEN. Absolutely, Senator. In fact——

The CHAIRMAN. Well, which is it? Do you think that the changes that were made provided more protection or less?

Mr. KATEN. They provided more protection, sir, absolutely.

The CHAIRMAN. Well, we heard, of course, very considerable testimony yesterday from those who have both been in the agency for years and been very much involved with the whole development of the safety regulations, who believe that the kinds of changes that were being made—which in most instances were recommendations that were being made by the coal industry itself—were changes that provided less protection for the miners. And then we heard that after those changes were made, there were a number of very tragic accidents. So I think we will have to reserve judgment on your statement that they provided more protection.

After all, you had committees making their recommendations, and after they were reported a whole series of recommendations were made by the coal industry. And then the regulations were changed, accepting many of the coal industry's recommendations. You might argue that the industry knew more about safety than MSHA's experts. But after the regulations were adopted which conformed to industry's recommendations, dramatic fatalities occurred that would have been prevented if the original regulations had been accepted.

Now if you want to take the burden on of arguing that the regulations provided more protection, you can take it on, but you are going to have a tough time convincing any open-minded person.

Now, if we could come back to Mr. McMillan and some of the other testimony that we heard yesterday. On the recommendation of GAO, the agency issued a written policy in 1980 that henceforth, all investigations of multiple fatalities would be investigated by the Division of Safety. It also provided that internal memos would be written to the Division of Safety concerning agency deficiency or negligence in these accidents.

And three years later, after Mr. Potter wrote a memo pointing out that agency negligence contributed to 8 of the 16 multiple fatalities, the memos were orally terminated.

Then, last year, again without anything in writing, the policy that the Division of Safety would investigate all multiple fatalities was changed.

Don't you think that, in the same way as the regulations process, we are moving backward rather than forward in terms of mine safety?

Mr. McMillan. I am not comfortable characterizing that we are moving backward. I am very uncomfortable also that the change that was made was a good one. I think it is one of those issues that I made mention of in my opening statement, that you have raised, that has just recently come to my attention. I am going to go back and review that.

I share in a large part your concern and the concern of a number of the people that testified yesterday that we must be in the position of not only looking at what have been the activities of operators, but we also must take a look at what have been our activities in administering the law, and that if in fact we look at ourselves and do it fairly and do it objectively and find that we have in some way lacked, then we need to be able to say that we have to correct it.

So to the extent that that part of the process has been terminated, yes, I agree with you, we need to stop and go forward from here.

The Chairman. Well, I am not sure I understand that answer. I don't know whether you are going to go back to the recommendations of the GAO or not. They had made recommendations—not that every GAO recommendation is always useful or valuable, but it seems to have a certain sense of logic to it, which was that henceforth the investigations on the multiple fatalities would be investigated by the Division of Safety, and that internal memos would be provided to the Division of Safety concerning agency deficiencies or negligence in these accidents.

I thought the case was very well-made yesterday that when you are looking for where the problems are, you ought to be able to look at the whole situation—deficiencies in the agency as well as whatever deficiencies there might be in the mines—but you ought to have an opportunity to look at both. Maybe the problem is that there are not enough trained personnel; there were a number of such items that were listed in the memoranda yesterday.

We have seen, as Mr. Potter pointed out, that the agency's negligence had contributed to 8 of the 16 multiple fatalities.

The process and procedure where MSHA's negligence was exposed has been basically vacated and eliminated. And without, as far as I can see, any indication that it was being eliminated to enhance safety.

So I just want to know what we might be able to expect.

Mr. McMillan. Mr. Chairman, I think you will appreciate to a certain degree that as it relates to such items as the GAO, the earlier GAO recommendations which you referenced, I am totally unaware of those as of this day; I have not seen that GAO study.

The Chairman. Okay.

Mr. McMillan. The major part of the issue that was recently raised—in a larger context of the agency, but certainly for me to become aware of this issue is just recent, within the last week. So with regard to that, my statement is that certainly it appears to make sense to go back and take a look at that. I would like to do that, and certainly am more than willing to come back and advise you of the actions we take.

The CHAIRMAN. All right.

Let me ask what your position is on whether it is appropriate for investigations of multiple fatalities to be conducted by an agency outside of MSHA.

Mr. McMILLAN. This is a difficult one for me to give you a definitive response to, based on my limited knowledge. I certainly do not yet feel that there is any need to take those investigations and move them outside of MSHA organizationally. Having listened to the testimony that was raised yesterday, being briefed on it, and looking at some earlier comments made by other members in our headquarters staff, there is an awful lot of credibility to the issue that we ought to take some look at providing a separation of the investigations of fatalities and disasters from those people who are out doing the daily inspections in those mines.

It only makes sense that there is at least the potential to not be able to take a look at one's own actions if we have been inspecting that mine in the past, and now we are going to go in and investigate a disaster that has occurred.

How we craft that, I think, is a bigger question. Do we need to go all the way to the extreme of creating another organizational entity that does that? I do not think we do at this point. I do clearly feel, though, that we must do something about looking at, given that process, some objectivity either from the headquarters or by putting together teams from outside that district to give that investigation some objectivity so that if part of the investigation shows that we are at fault in some way, it can be brought forward and not given any hidden connotation.

The CHAIRMAN. Do you feel the same way about criminal investigations?

Mr. McMILLAN. Criminal investigations to date are done by separate people from our safety inspectors. They are in fact a separate part of our organization as it relates to their job functions.

The concern that I have there is the reporting system for our criminal investigators back up through the chain of command. As I have understood it in just the few weeks I have been here, we have really got a mishmash of kinds of organizational structures. In some of our districts, the special investigators are reporting to district managers. In some of our districts, they are reporting to supervisory special investigators.

Clearly, we have an inconsistency that needs to be resolved organizationally, if for no other reason than for an issue of policy, and I am going to take a look at that.

The CHAIRMAN. Why should they be reporting to the district managers? We heard testimony yesterday that the district managers in many instances were part of the problems in the district offices. Why would a criminal investigation be up to the district managers? Answer that, and then tell me how you did it in OSHA. You were in OSHA for a long period of time.

Mr. McMillan. I think there are issues to be argued almost on either side of that. The question is where is the better integrity of running the program.

One issue that you would look at as to why it might be good to put them under the districts is that they work hand-in-hand on an ongoing, daily basis with the inspectors that work in that district.

For instance, Mr. Chairman, when a fatality, a disaster, does occur, the special investigators accompany the regular safety inspectors as part of that process. So you have an issue of coordination that needs to go forward. And to that end, there is a certain degree of logic that would say it would be good to do that; you can coordinate the activities better.

On the other hand, from the perspective that what they also might do is find some issues that would involve our own activity; that then raises the issue of should they not in fact be separate.

I would also add to that, when a special investigator doing a fatality or disaster investigation comes across some issue of potential impropriety on the part of any one of our people, that it is not their job to go forward and do that investigation. That part of the process must be referred, under our procedures in the Department, not just in MSHA—and I presume it is similar in other Federal agencies—to the Office of the Inspector General. The role and responsibility of looking into any allegation of impropriety on the part of MSHA's managers or other inspectors is not the role of our special investigators. Their role is to look at issues of discrimination and to look at issues of potential violation of our section 110 and any possible criminal referral to the Department of Justice.

In that process—as came out in yesterday's testimony, there have been a number of real cases where MSHA investigators have uncovered some concerns about MSHA management or other inspectors' involvement. That then needs to be taken out of their hands, and separately referred to the Department of the Inspector General, to the Office of the Solicitor, and if necessary to the Department of Justice for criminal prosecution.

The second part of what you asked me is how do we do it in OSHA. It is an apples and oranges kind of thing in that there is not a direct parallel. In OSHA, our activity is more concerned toward the discrimination side—has a worker been discriminated against or harassed in attempting to pursue his rights under the law—rather than the special investigative function for criminality.

The special investigative function for criminality in OSHA is handled by the inspectors and their supervisors themselves then referred to the Office of the Solicitor and accordingly over to the Justice Department. So we are not dealing with the same kind of weighing and balancing of their onsite responsibilities.

The Chairman. Well, I appreciate your response, but yesterday, we heard from those who have been in the Department and have had first-hand experience with the existing procedure, and they believed that investigations into multiple fatalities and criminal cases should be conducted by an agency outside of MSHA. I wish you would take a look at that testimony, because people who have been involved in that kind of activity for the agency and who had spent a good deal of their lives in it were uniformly in favor of it and it is something that we want to find out about.

Mr. McMillan. Certainly.

The Chairman. I appreciate that.

At this time, I will recognize Senator Stafford.

Senator Stafford. Thank you, Mr. Chairman.

Since we do not mine much coal in Vermont, I have to start from scratch here, so let me ask very quickly one or two elemental questions.

The first one has to do with your statement that you plan four annual inspections of mines in the future. How many mines does that involve?

Mr. McMillan. Senator, the requirement in the Act itself, the law, is for four annual inspections of underground mines and two of surface mines.

Senator Stafford. Yes, I understand that.

Mr. McMillan. I do have that number. The number of mines currently in coal—is about 5,500. About half of that number would be underground mines.

Senator Stafford. In connection with that number, according to your statement also, you have increased your work force for inspections by about 160 people?

Mr. McMillan. That is correct.

Senator Stafford. How many does that give you altogether, and is that a large enough force to accomplish four inspections a year?

Mr. McMillan. Twelve hundred and one is MSHA's total staffing allocation for inspectors, both surface and underground inspectors. We had been significantly below that number over the past few years, mainly due to attrition. With the additional 90 inspector positions, which we have moved forward to fill, we will reach 1201 this fiscal year.

Yes, Senator, I do think that is sufficient to do the job. The mining population, the number of mines, has been in a slow decline over the past few years; that has been the trend.

Senator Stafford. What would be some of the other categories of underground mines that would fall under your jurisdiction? McMillan. Well, in the metal and non-metal side of our business, we have underground mines that would range from copper mines to gold to metals to salt, et cetera.

Senator Stafford. Would the major problems be in connection with the coal mines?

Mr. McMillan. Yes, Senator.

Senator Stafford. All right.

Thank you, Mr. Chairman.

The Chairman. Thank you, Senator.

Now, Mr. McMillan, as I understand, the ventilation survey by the Division of Safety, documenting the widespread existence of gassy gobs that have caused several major disasters and numerous fatalities, was ignored and never published. Is that good mine safety policy?

Mr. McMillan. I am totally unfamiliar, Senator, with the ventilation survey other than what I was briefed on in the testimony from yesterday afternoon.

The Chairman. All right. You can make it part of your response for the record.

Mr. McMillan. I would like to respond for the record.

The CHAIRMAN. There was a litany of accusations yesterday against your current Administrator of Coal Mine Safety and Health. There was also critical testimony about the harassment of special investigators in three different districts because they did their job. Do you believe that harassment of special investigators by your own district officials is an acceptable practice?

Mr. McMILLAN. You really asked me two questions. First, do I believe it occurred? I do not have enough information yet to make any kind of a determination regarding that. I feel far more comfortable in answering the second part of your question. If it occurred in any case, it is absolutely reprehensible and prohibited, and we will move—and have moved in the past—on managers who have been found to be taking reprisal actions against our people for doing a good job.

The CHAIRMAN. I would hope that you would take a good look at the breaking up of the most effective unit in the agency, and then the transfer of the head of it, as we heard yesterday, to a meaningless job at headquarters.

I do not know whether you have had an opportunity to familiarize yourself with that particular case or not.

Mr. McMILLAN. I have not, Senator. I met that individual for the first time this morning.

The CHAIRMAN. Would you take a look at that testimony, too, and include it in your response for the record?

Mr. McMILLAN. I will.

The CHAIRMAN. We heard that they had the best record—24 cases made and 24 convictions—and then those that were involved in that program were basically broken up. And you can just look at the record since that period of time as going from one of the best to one of the least effective in terms of shaping and fashioning the cases and bringing them to court.

And of course, I think it would be fair to say that a pretty important signal was sent to the coal industry that they do not have to worry very much more about criminal investigations or criminal prosecutions. So its implication is very, very significant, and I want you to take a look at that.

Mr. McMILLAN. Senator, I would add that it is my information, and I hope it is correct, that of those four individuals one was reassigned—one was promoted to a supervisory special investigator position in another one of our districts.

The CHAIRMAN. Well, if you could read through those comments and read through what the statements were that were made to all of them at the time of the transfer.

Mr. McMILLAN. Certainly.

The CHAIRMAN. And look at the record of what has taken place since they have been transferred out.

Senator Hatch?

Senator HATCH. Thank you, Senator Kennedy. I want to thank you again for holding these hearings. I think this is very important issue, and I have appreciated hearing from the witnesses here this day, and I look forward to hearing from the other witnesses.

Yesterday, we heard an alarming number of examples of mismanagement, misconduct, and mistakes by employees of the Mine Safety and Health Administration. If several of these charges are not refuted or explained, I think corrective action is going to have to be necessary.

The testimony focused on two allegations. First, we heard that some MSHA officials have for years been biased toward industry, that they are biased toward the industry that they are charged with regulating, and that this bias has endangered lives.

Secondly, we heard that MSHA lacks an effective mechanism for policing its policies, and we got that from former MSHA employees, which bothers me a lot—people for whom I have a lot of respect and who are honest people.

Now, I think you, Mr. McMillan, as the newly-appointed Acting Assistant Secretary of Labor, should be given a chance to determine the scope and the accuracy of these charges, and should be given a chance to make the necessary changes. And it is apparent that these problems have gone on for years, not just during this Administration, but during prior Administrations as well; that it is an endemic problem with MSHA.

I want to personally tell you, Mr. McMillan, that I think that you have approached this job as you have come into it in a good way. I think Secretary Brock in choosing you has done a very good job, and I am going to hold you accountable and responsible to change this pathetic state of events.

I want to thank my Chairman here for holding these hearings. We started them last year, as he mentioned yesterday, but he is doing a very good job of trying to get these matters out into the open.

I hope that the public is not left with the impression from these hearings that all MSHA employees are incompetent or biased toward industry. In fact, I think most are hardworking, dedicated public servants, and I think you would admit that, Mr. McMillan.

I think this is one of the most difficult areas imaginable. Tremendous tragedies do occur. Now, the public's faith in your employees, the employees of MSHA, I think has to be maintained for the system to work, and they do need our support. I hope that the representatives of MSHA do not feel that we are just finding fault with them.

The current regulatory review process, in my opinion, is a nightmare at MSHA. It provides little chance for a regulation ever to be finalized. And this is one area where we have to have regulations; it is just that simple. And many of the examples we discussed yesterday were not proposals published in the Federal Register, but were pre-proposal drafts.

I think the review process that presently exists satisfies nobody. And as I understand, the mining companies also were unhappy with several provisions of the various proposals discussed yesterday. Both the American Mining Congress and the Bituminous Coal Operators Association, for example, opposed the entire proposed ventilation standard. No one seems pleased with the current process, including, I imagine, even yourselves.

In an industry as dangerous as mining, we all know accidents are going to occur, but too often we are dealing with failures rather than the prevention of failures. MSHA fails to enforce the law, the companies fail to obey the law, miners fail to comply with the law. The accidents caused by failures, it seems to me, can and must be prevented by working with all three areas and doing everything we can to help in those areas.

So we face the really difficult task here of determining what needs to be done to improve MSHA, and we are going to do that.

With your permission, Mr. Chairman, if I could just ask a few questions—I do not want to take too much of your time, because you have been asking many of the pertinent questions, and I have been very respectful and appreciative of what you are doing here.

[The prepared statement of Senator Hatch follows:]

From the office of

SEN. ORRIN HATCH

Washington, D.C. 20510

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## STATEMENT OF SENATOR ORRIN G. HATCH
## MSHA OVERSIGHT HEARING
## UNITED STATES SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
## MARCH 12, 1987

Yesterday, we heard an alarming number of examples of mismanagement, misconduct and mistakes by employees of the Mine Safety and Health Administration. I am very interested in the testimony we are scheduled to receive today, because if several of these charges are not refuted or explained, corrective action will be necessary.

The testimony from yesterday seemed to be focused on two allegations. First, several witnesses indicated that some Mine Safety and Health Administration officials have for years been biased towards the industry they are charged with regulating, and that this bias has endangered lives. Second, we heard testimony indicating that the agency lacks an effective mechanism for policing its own people, that the district managers are given too much latitude.

Alan McMillan, the newly appointed acting Assistant Secretary of Labor, faces a difficult challenge. He must determine the accuracy and scope of these serious charges and make changes where necessary. I hope that we in Congress will give him an opportunity and the time to perform this task.

For him to be successful, however, I think it is important that the record be as accurate as possible. For example, I believe the majority of MSHA employees are neither biased nor incompetent. They struggle daily in one of the hardest jobs imaginable to maintain a sense of objectivity. I hope that these hearings do not leave the public with a contrary perception. We must recognize that for our mine safety laws to work, the mine operator and more importantly, the mine worker, must have confidence in the local mine inspector. Without that trust, our system simply can not function.

The testimony yesterday made clear that the current regulatory review process at MSHA is a bureaucratic nightmare. The procedures that must be exhausted before a regulation is issued provide little chance for any regulation to be finalized in a timely fashion. Many of the examples we discussed yesterday were not proposals published in the federal register but pre-proposal draft standards. These drafts are highly complex and lengthy and, depsite the perception from yesterday's hearing, not all are acceptable to industry. For example, I understand that both the American Mining Congress and the Bituminous Coal Operators' Association opposed the ventilation standard. It seems obvious that neither the unions nor the companies are pleased with this process.

Mr. Chairman, in an industry as dangerous as mining, accidents will occur. But too often we learn not of accidents but of failures. MSHA fails to enforce the law. Companies fail to obey the law. And, miners fail to comply with the law. The accidents caused by failures can and must be prevented. We now face the more difficult task of determining what needs to be done to improve MSHA. I hope that we can begin this important mission this morning by hearing not just what is wrong with the agency but also what can be done to improve it.

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The CHAIRMAN. Certainly.

Senator HATCH. Mr. McMillan, I realize that you have been on the job only two months—I respect what you are trying to do; I respect the way you have taken on this job; I respect the seriousness with which you are taking it, and I hope that my comments today and those, of course, of our Chairman, lend some dignity to the fact that we are going to expect a lot more out of MSHA than we have in the past.

You are an experienced Federal regulator. You understand this system. Do you feel that the regulatory review process currently in place at MSHA, part of which is structured in accordance with the law, is effective?

Mr. MCMILLAN. There are some parts of it that are working, and there are parts of it that are not working that we have to back and take a look at.

Senator HATCH. What steps can be taken, then, or eliminated, to streamline the regulatory review process?

Mr. MCMILLAN. Clearly, we have two competing things—one, to try to move regulations in a timely manner—and at its very best, it is a slow process with pre-proposals, proposals, public comment. And it is good, and it is necessary to do those to get the input that is needed.

So, in balancing the effort of trying to move forward quickly, but also balancing the most critical need of getting a standard that provides the best protection to the miner, we can do some things.

It seems to me that in MSHA, we have gone through a transition of a system. We started off using a lot of technical committees, and then those technical committees gave their input to the Standards Office, then to the Solicitor's Office, and others.

It would be my guess—and I am not really experienced in the area of regulatory development—but it would be my guess, from a management point of view, that what we need to do is bring our technical people together with the attorneys and the standards people at the beginning of the process; put them in the same room together, so we do not finish this draft and send it on to the next group, and they then rework it and send it on to the third group, and the third group then starts back with all the changes and lets the first group review it. We need to bring those people together and the beginning and keep them together until we complete the process.

Senator HATCH. I think you ought to do that. I think it is a good idea. And I can tell you if it is not done, we are going to come up with some ways of forcing them together. And I hope we do not have to do that, because I think that to add another layer of bureaucracy back here is just a big mistake, in spite of the testimony yesterday—and I think there is some reason for that testimony based upon the errors and the omissions and even, some people think, some criminal conduct that exists.

In fact, you yourself have recently reinstituted procedures for referral to the Department of Justice of criminal violations of the Mine Act. In fact, I would like to hear some of your reasons behind making that decision.

Mr. MCMILLAN. I was concerned when I came onboard in looking very quickly at the concerns raised, quite frankly, by your hearings back in late September. One of the major issues raised was the memorandum that modified the previous activities on referrals. That memorandum in part spoke to mitigating circumstances. And I felt that part of the memorandum was at best confusing and misleading.

When we look at the issue of a potential criminal violation of the law, the issue should not be before the MSHA investigators to start look at mitigating issues. We ought to pursue the issues of potential criminality, refer it to the Department of Justice for prosecution when appropriate, and then let the system take over as it will, outside of our control, through the grand jury process, and if there are mitigating circumstances, they ought to consider them way down the line at that point—not by our people.

Senator HATCH. Okay. From yesterday's testimony, it appears that some MSHA districts enforce the law in a more consistent manner than others, and I might just ask you this. What do you intend to do to get more consistent enforcement procedures throughout MSHA's district offices or, put another way, what steps can be taken to better monitor the activities and decisions of the district managers?

Mr. MCMILLAN. I believe we have a rather significant and broad organizational issue that must be dealt with in MSHA. Coming from a field organization, being a field administrator, what I see here is that we have an awful lot of fine district managers, subdistrict managers, and an awful lot of outstanding inspectors at all levels in our organization.

What we are not doing, in my opinion, that needs to be done, is we are not putting in place a system of management accountability so that the policies that do come out of the national office are uniformly followed. We are not following up on many of these policies. We are sending out policies, and we are leaving it to the interpretations of a lot of different district managers to use their best judgment.

What I would like to do—and I will be moving forward very quickly—is put in place a system that starts in our national office, laying out clear requirements that will be followed up with audits and/or evaluations of the districts, to assure that they are following the policies, that we have uniformity and consistency across 16 districts—10 in coal, 6 in metal/non-metal—that the policies are being carried out in the same way.

Audits will involve headquarters people going out and looking at the districts, looking at samples of specific cases, talking not only to supervisors but talking to some of our inspectors about what is going on in their districts, and then requiring those district managers to respond back to Arlington on corrective action needed.

However, it goes further than that. Another issue I have is a concern, and it has been raised by both Senator Kennedy and yourself, Senator Hatch, is the issue of quality of inspections. So the system not only has to be a broad system of looking at district management, but it also needs to go beyond that. It needs to get down to the district level and require that they put in place some system, under guidelines, that requires them to look internally at their own operation, all the way down to individual supervisors accompanying their inspectors on a regular basis and doing onsite evaluations of the quality of the work that is taking place.

Senator HATCH. I want to thank you for those comments. I think that is a good step. But yesterday, we heard extensive comments that MSHA has a structural inability to both investigate and regulate, and we had at least a suggestion from more than one person that perhaps we need a separate investigatory or new Federal agency. What is your feeling about that?

Mr. MCMILLAN. My feeling is that we absolutely do not need another Federal bureaucracy. I think that goes too far beyond solving the problem.

If there is a concern—and there is a concern—about having the same people looking at themselves, that is those who have been out in the mines doing the daily inspections, we may need to correct that and perhaps even go back to an earlier situation that existed in MSHA and have those multiple fatalities, et cetera, being investigated by some part of our organization that is in fact separate.

Now, there are different ways to do that. We can bring people from outside of one district. We can bring people from other areas to go in and form a team. There are various ways to craft a strategy that will resolve that problem.

Senator HATCH. Are you in the process of doing that?

Mr. MCMILLAN. Yes, we are. I do not think, though, that the answer is to go all the way to establishing an independent organization.

Senator HATCH. Well, I want to thank you for being here, for testifying. I want to thank you for the diligence with which you are approaching this job. I hope you are right. I hope we do not have to have another Federal agency. I for one think we have too many now.

On the other hand, only time is going to tell, and I think it is going to depend upon how successful you are in cleaning up what really is a mess in some areas.

You have a big mandate and a big charge from us, and you are going to have to move forward. There still may be a new Federal agency; I do not know, but I personally hope you can do it within the structure that you have at MSHA and that it will be done properly.

I do not think business needs to be oppressed; I certainly do not think workers should have to go into unsafe conditions. And I do think that the workers have to do some things, the employees have to do some things to protect themselves and to learn a little bit more about their business and about safety procedures in the business, in the mines.

But it is up to MSHA, management, and others to help them to know. I am at least pleased that since our tragic disaster out in Utah, some of the coal mine operators are taking corrective steps to make sure that people really understand the safety processes and problems. I think that is important.

I want to thank you, and much of what you are saying certainly hits home and means a lot to me, as somebody who is extremely interested in this particular area.

Thank you, Mr. Chairman. I hope I did not take too long.

The CHAIRMAN. Thank you very much, Senator Hatch. We welcome your developing the early hearings and your strong involvement in the course of these hearings as well.

Senator HATCH. Thank you.

The CHAIRMAN. Mr. McMillan, I have a few more questions for you, and then I would like to inquire of the panel.

Mr. Finnie, who was responsible for the conviction of the Peabody Company, was nominated as investigator of the year for his work on that case. The nomination was sent express mail to meet the agency's deadline. The agency then had two weeks to meet the deadline of the National Association of Federal Investigators; yet Mr. Finnie was advised by Mr. Ryan that his application was not received in time to be processed.

Now we know that Assistant Secretary Zegeer was upset by the Peabody indictment at the time.

Mr. McMillan, do you have any information that Zegeer killed Mr. Finnie's nomination by ordering that it not be processed in time?

Mr. MCMILLAN. Mr. Chairman, I do not. My first awareness was from yesterday's testimony. And I would like to comment on that if you will give me a second.

Absolutely, one of the principal jobs of managers is that we have to recognize outstanding performance and to make sure that no roadblocks stand in the way of that recognition. The feedback I have heard is that Mr. Finnie is one of our finest supervisors.

I would like to go back and take a look at that issue. I do not know at this point in time, in 1987, about that specific award activity, what the system might allow us to do. But if there is any flexibility, and if it was timely filed in Arlington—as I understand from yesterday's testimony it was—I would like the opportunity to take a look and see where the roadblocks were, if in fact any occurred.

The CHAIRMAN. Well, we will await your answer on that, because the circumstances surrounding that would certainly indicate—and I saw the receipt—that the application had been Federal Expressed more than ten days prior to the deadline period. Then, to hear that the application was not processed is enormously disturbing and distressing, especially if that recognition—of which I think any person who reviewed the work of Mr. Finnie would agree had been well-deserved—was sidetracked because of some personal kinds of activities, vendettas, or whatever way you would want to describe it.

Would you also make inquiry into the recent downgrading of Mr. Finnie's performance evaluations, because I think it was clear to everyone present at yesterday's hearing that Mr. Finnie deserves only the highest commendation for his day-to-day performance.

Mr. MCMILLAN. I will do that, Mr. Chairman. If I could do no more here today than, in some small way, effect a response to clearly what was a perception raised yesterday by almost every person—and that is that good performers are penalized—I would like to try to correct that with your help today.

The CHAIRMAN. Good.

Mr. MCMILLAN. We will not penalize good performers. Secretary Brock will not permit us to have a system that does that. And actions are going to speak louder than words, Mr. Chairman, I understand that, but I think if you will review our actions in the future, you will see that we are sincere.

The CHAIRMAN. Well, I think that would be worthwhile, because you had a situation where there were very impressive performance records, and this person was nominated as outstanding investigator, and then—boom—that just virtually changed overnight. There were suspicious circumstances around it, and we would like to get to the bottom of it.

I have some other questions for the other members of the panel. I appreciate, Mr. McMillan, your responses. It has been, I think, hopeful. I think you have a good enough understanding that we are going to continue our interest and pursuit of these matters. We want to work with you, and we want to work with the Department, but we are not going to permit the current condition to continue.

Can we have assurances from yourself that the careers of any of the employees of the agency who testified yesterday will in no way be adversely affected because of their testimony?

Mr. MCMILLAN. Absolutely.

The CHAIRMAN. Well, I appreciate that. I want to make it very clear. That was an excellent response, and it is one which should certainly be expected, but I want to give assurances to those personnel that we will certainly monitor the situation over the future years.

Now, I would like to address some questions to Mr. Spicer.

Mr. Spicer, what is your present position?

Mr. SPICER. I am Administrator for Coal Mine Safety and Health.

The CHAIRMAN. And how long have you been in that position?

Mr. SPICER. Since September 4th, 1986.

The CHAIRMAN. And what was your position before that?

Mr. SPICER. I was Deputy Administrator beginning in January 1984.

The CHAIRMAN. And at some time, were you the district manager in District 7 of the agency?

Mr. SPICER. I was district manager in Barbourville, Kentucky, District 7, from July 1, 1974 until January 1984.

The CHAIRMAN. What is the area of that jurisdiction?

Mr. SPICER. It is all but 20 counties in east Kentucky, Tennessee, northwest Georgia, and Alabama.

The CHAIRMAN. Agency records indicate that from 1978 to 1986 there were 196 fatalities in District 7. Does that sound right?

Mr. SPICER. I would say so, yes, sir.

The CHAIRMAN. The agency records also indicate that District 7 had the highest number of fatalities of all 10 districts during that period. Is that correct?

Mr. SPICER. I am not sure that that is correct, sir, but it had a high number.

The CHAIRMAN. Well, the records also indicate that there were more multiple fatalities in that district than in any district. There had been 11 just since 1980. I do not know if you have had a chance to look over that exhibit.

Mr. SPICER. Yes, sir.

The CHAIRMAN. Does that look about correct?

Mr. SPICER. Yes, sir. The accidents I see occurred.

The CHAIRMAN. Could you give us any idea what is the reason for the fact that it has had one of the highest fatality records and more multiple fatalities than any other district?

Mr. SPICER. Part of it, Senator, is the fact that it is a large district. It is the second-largest district in number of mines. And in some years, not all years, but in some years, the percentage of miners killed was in proportion to the percentage of miners working across the country. In other years, it was higher.

The type of mining performed in east Kentucky and Tennessee is a difficult type of mining. The mines are small, the operations are small, and the mines do not have the big engineering forces, and it is more difficult to get the miners trained.

[Information supplied for the record follows:]

## LIST OF MULTIPLE FATAL ACCIDENTS OCCURRING FROM JANUARY 1, 1980 - FEBRUARY 12, 1987

| Company Name | Date of Accident | No. Killed | Type of Accident |
|---|---|---|---|
| Frank Crawford, Jr., Coal Company<br>No. 1 Mine (ID 15-12598)<br>Woodbine, Whitley County, Kentucky | October 27, 1980 | 3 | Explosives |
| Zeigler Coal Company<br>Spartan Mine (ID 11-00612)<br>Sparta, Randolph County, Illinois | September 15, 1980 | 3 | Roof Fall |
| Westmoreland Coal Company<br>Ferrell No. 17 Mine (ID No. 46-02493)<br>Uneeda, Boone County, West Virginia | November 7, 1980 | 5 | Explosion |
| Mid-Continent Resources, Inc.<br>Dutch Creek No. 1 Mine (ID No. 05-00301)<br>Redstone, Pitkin County, Colorado | April 15, 1981 | 15 | Explosion |
| Grays Knob Coal Company<br>No. 5 Mine (ID No. 15-05184)<br>Grays Knob, Harlan County, Kentucky | June 3, 1981 | 3 | Inundation (Black Damp) |
| Northern Coal Company<br>Rienau No. 2 Mine (ID No. 05-00285)<br>Meeker, Rio Blanco County, Colorado | July 30, 1981 | 2 | Roof Fall |
| Clinchfield Coal Company<br>Open Fork No. 2 Mine (ID No. 44-00267)<br>Nora, Dickenson County, Virginia | October 23, 1981 | 2 | Roof Fall |
| Bridget Coal Company, Incorporated<br>No. 1 Mine (ID No. 44-05171)<br>Rowe, Buchanan County, Virginia | November 16, 1981 | 2 | Roof Fall |
| Elk River Sewell Coal Company, Incorporated<br>Stillhouse Run No. 1 Mine (ID No. 46-06306)<br>Bergoo, Webster County, West Virginia | December 3, 1981 | 3 | Roof Fall |
| Adkins Coal Company,<br>No. 11 Mine (ID No. 15-02290)<br>Kite, Knott County, Kentucky | December 7, 1981 | 8 | Dust Explosion |
| Grundy Mining Company, Incorporated,<br>No. 21 Mine (ID No. 40-00524)<br>Whitwell, Marion County, Tennessee | December 8, 1981 | 13 | Explosion |

# LIST OF MULTIPLE FATAL ACCIDENTS OCCURRING FROM JANUARY 1, 1980 - FEBRUARY 12, 1987

| Company Name | Date of Accident | No. Killed | Type of Accident |
|---|---|---|---|
| ✓ [redacted]y<br>[redacted])<br>[redacted] County, Kentucky ✓ | December 19, 1981 | 2 | Roof Fall |
| ✓ [redacted]on<br>[redacted]<br>[redacted] County, Kentucky ✓ | January 5, 1982 | 2 | Explosive |
| Phelps Mining, Incorporated<br>No. 3 Mine (ID No. 15-12735)<br>Phelps, Pike County, Kentucky | January 22, 1982 | 2 | Roof Fall |
| Energy Development Company<br>Vanguard No. 2 Mine (ID No. 48-00948)<br>Hanna, Carbon County, Wyoming | February 23, 1982 | 2 | Roof Fall |
| [redacted]<br>[redacted]<br>[redacted] County, Kentucky ✓ | April 26, 1982 | 2 | Roof Fall |
| Clinchfield Coal Company<br>Hurricane Creek Mine (ID No. 44-01773)<br>Clinchfield, Russell County, Virginia | June 2, 1982 | 2 | Roof Fall |
| Island Creek Coal Company<br>Virginia Pocahontas No. 1 Mine<br>(ID No. 44-00246)<br>Oakwood, Buchanan County, Virginia | August 24, 1982 | 3 | Fall of Material |
| Kara Coal Corporation<br>No. 1 Mine (ID No. 46-06340)<br>Holden, Logan County, West Virginia | May 10, 1983 | 2 | Roof Fall |
| U.S. Steel Mining Co., Inc.<br>Maple Creek No. 1 Mine (ID No. 36-00970)<br>New Eagle, Washington County, Pennsylvania | May 23, 1983 | 2 | Roof Fall |
| Clinchfield Coal Company<br>McClure No. 1 Mine (ID No. 44-04251)<br>McClure, Dickenson County, Virginia | June 21, 1983 | 7 | Explosion |
| Trent Coal, Inc.<br>Hritz Mine (ID No. 36-01471)<br>Hooversville, Somerset County, Pennsylvania | November 14, 1983 | 2 | Roof Fall |

## LIST OF MULTIPLE FATAL ACCIDENTS OCCURRING FROM JANUARY 1, 1980 - FEBRUARY 12, 1987

| Company Name | Date of Accident | No. Killed | Type of Accident |
|---|---|---|---|
| Greenwich Collieries Division of Pennsylvania Mines Corporation<br>Greenwich Collieries No. 1 Mine (ID No. 36-02405)<br>Green Township, Indiana County, Pennsylvania | February 16, 1984 | 3 | Explosion |
| **Bon Trucking Company, Inc.**<br>**Berger No. 2 Mine (ID No. 15-13202)**<br>**Evarts, Harlan County, Kentucky** | September 12, 1984 | 4 | Roof Fall |
| DMC Energy, Inc.<br>No. 1 Mine (ID No. 15-13362)<br>Pathfork, Harlan County, Kentucky | December 4, 1984 | 2 | Roof Fall |
| Emery Mining Corporation<br>Wilberg Mine (ID No. 42-00080)<br>Huntington, Emery County, Utah | December 19, 1984<br>(Report not yet released) | 27 | Mine Fire |
| **Flat Rock Coal Company, Inc.**<br>**No. 4 Mine (ID No. 15-14856)**<br>**Wallins, Harlan County, Kentucky** | June 12, 1985 | 2 | Roof Fall |
| **R and R Coal Company**<br>**No. 3 Mine (ID No. 15-13127)**<br>**Woodbine, Whitley County, Kentucky** | August 15, 1985 | 3 | Explosives |
| C L and S Coal Company<br>No. 3 Mine (ID No. 46-04317)<br>Hanover, Wyoming County, West Virginia | September 24, 1985 | 2 | Roof Fall |
| M. S. W. Coal Company<br>No. 2 Slope Mine (ID No. 36-06279)<br>Carlstown, Schuylkill County, Pennsylvania | December 11, 1985 | 3 | Explosion |
| Mountain Top Coal Company<br>Buck Mountain Slope (ID No. 36-07359)<br>Tower City, Schuylkill, Pennsylvania | December 12, 1985 | 2 | Explosives |
| Consolidation Coal Company<br>Loveridge No. 22 (ID No. 46-01433)<br>Fairview, Marion County, West Virginia | February 6, 1986 | 5 | Suffocation |

## LIST OF MULTIPLE FATAL ACCIDENTS OCCURRING
## FROM JANUARY 1, 1980 - FEBRUARY 12, 1987

| Company Name | Date of Accident | No. Killed | Type of Accident |
|---|---|---|---|
| High Power Energy<br>Twenty-Mile Surface #901<br>(ID No. 46-06870)<br>Drennen, Nicholas County, West Virginia | June 28, 1986 | 2 | Explosives |
| Freeman United Coal Mining Company<br>Orient No. 6 (ID No. 11-00599)<br>Waltonville, Jefferson County, Illinois | July 9, 1986<br>(Report not yet released) | 3 | Roof Fall |

The CHAIRMAN. Did you and your district officials support your inspectors and special investigators in their efforts to enforce the Act?

Mr. SPICER. I believe so, yes, sir.

The CHAIRMAN. We had considerable testimony yesterday that you did not, so let me just go over some of that testimony. Did you approve this ventilation plan for the Grundy mine prior to the disaster?

Mr. SPICER. Yes, sir.

The CHAIRMAN. Did you think it was a good plan?

Mr. SPICER. When I approved it, Senator, I had no reason to think it was not. I thought it was. There had been an inspector in the mine who said that the ventilation plan was adequate, and my supervisory engineer thought the plan was adequate, and I approved the plan.

As it turned out, there were falls in that gob area where they could not travel, and in hindsight, it may not have been a good plan; but when I approved it, it was—or it appeared to be a good plan.

The CHAIRMAN. Well, did it provide for an adequate bleeder system, do you know?

Mr. SPICER. After the explosion, it was proven that the bleeder system was inadequate. Whether it was inadequate when the inspector made his judgments and when I approved the plan, I do not know; it could have been.

The CHAIRMAN. Was there negligence on the part of MSHA inspectors prior to the explosion?

Mr. SPICER. It was never determined that there was negligence, no, sir.

[Information supplied for the record follows:]

**U. S. Department of Labor**

Mine Safety and Health Administration
PO Box 572
Barbourville, Kentucky 40906

SEP [illegible] 1981

Mr. Charles "Ed" Presley, Chief Mining Engineer
No. 21 Mine, I. D. No. 40-00524
Grundy Mining Company
P. O. Box 878
Jasper, Tennessee 37347

Dear Mr. Presley:

The Ventilation System and Methane and Dust Control Plan for the above mine submitted in accordance with Subsection 75.316 of the Mandatory Safety Standards, Underground Coal Mines, has been reviewed and is approved for 3 working sections with the following provisions:

1. Drill holes shall be drilled in accordance with Section 75.1701, CFR Part 75, when any working place approaches within the specified distance stated in such section of any abandoned areas or abandoned coal mines that cannot be examined safely.

This plan is the basic system followed at this mine and should any major changes be anticipated, they shall be submitted to and approved by the District Manager before being adopted. Should any significant deficiencies be detected in the Ventilation System and Methane and Dust Control Plan during an inspection or investigation, this approval may be revoked.

UNLESS OTHERWISE NOTIFIED, AN UP-TO-DATE PLAN AND TWO MAPS SHALL BE SUBMITTED TO THE BIRMINGHAM SUBDISTRICT OFFICE BY 21 March 1982.

All provisions of published regulations and criteria pertaining to ventilation and methane and dust control must be followed unless a waiver has been granted in writing by the District Manager.

Very truly yours,

J. L. Spicer
District Manager
District 7

12-8-81 [illegible] has map & methane info

Richard [illegible] [illegible] will [illegible] [illegible] waiver [illegible] 1-12-82 LD ok

Charles Ed Presley
21 Sept. 1981

returned [illegible] 2-16-8[illegible]

mac
KM 10-6-81

U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
P.O. Box 572
Municipal Building
Barbourville, Kentucky 40906

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MEMORANDUM FOR: District Manager, District 7

FROM: Tommy D. Frizzell
Federal Coal Mine Inspector

SUBJECT: Review of Roof-Control Plan and Ventilation, Methane and Dust-Control Plan

The above named plans at the No. 21

Mine, I.D. No. 44-00524, Grundy Mining Co. Inc.

Company, were reviewed 7-24-81 and found to be:
Date

| | Roof Control | Ventilation |
|---|---|---|
| Adequate | ☐ | ☑ |
| Inadequate | ☐ | ☐ |
| Should be revised | ☐ | ☐ |

Explain reason for revising or justifications:

A review of The ventilation plan and mine map was reviewed and appears adequate, I recommend The Plan be approved.

TENNESSEE CONSOLIDATED COAL CO
BOX 878 JASPER, TENNESSEE 37347 TELEPHONE (615) 658 5188

established 1905

CHARLES "ED" PRESLEY
Chief Mining Engineer

July 17, 1981

Mr. Jerry L. Spicer
District Manager, District 7
Mine Safety & Health Administration
P.O. Box 572
Barbourville, Kentucky 40906

Dear Mr. Spicer:

Reference the Ventilation System and Methane and Dust Control Plan for Mine No. 21, Grundy Mining Co., Inc., I.D. No. 40-00524.

As shown on the map an airlock will be created between the main intake near Section 008 and the main belt line. This airlock will be constructed according to plan, utilizing any additional brattice material that may be necessary to insure the pushout car and tractor clear the airlock curtains while the dumping operation is in progress.

If any questions should arise concerning the above please contact me at this office.

Sincerely,

Charles Ed Presley
Charles Ed Presley

CEP/bb

TENNESSEE CONSOLIDATED COAL CO
BOX 878 JASPER, TENNESSEE 37347 TELEPHONE (615) 658-5188

established 1905

CHARLES "ED" PRESLEY
Chief Mining Engineer

June 5, 1981

Mr. Jerry L. Spicer
District Manager, District 7
Mine Safety & Health Administration
P.O. Box 572
Barbourville, Kentucky 40906

Dear Mr. Spicer:

Reference the Ventilation System and Methane and Dust Control Plan for Mine No. 21, Grundy Mining Company, Inc., I.D. No.40-00524.

Please find attached the updated 6 month submission showing the location of the 2 existing sections 003 & 007 plus the proposed new section, 008.

Projections for 003 and 007 are the same as those previously submitted except for the connection between each section approximately every 1000' feet. Request permission to install an airlock using double (2) metal doorways between the intake of 003 and the return from 007. Both doors are to be maintained in a closed position when not in use and only one door at a time will be opened.

Section 008 will be established by constructing the section separating brattice line in the mains as shown at least one full break outby the advancing faces. All air that crosses the working faces will be directed to the returns as shown. Section dumping will be on the main beltline accessed through a standard curtain airlock, see plan.

If any questions should arise concerning the above, please contact me at this office.

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Sincerely,

Charles Ed Presley

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## VENTILATION SYSTEM AND METHANE AND DUST CONTROL PLAN

## GENERAL

1.

| | |
|---|---|
| COMPANY NAME: | Grundy Mining Company, Inc. |
| MINE NAME: | No. 21 |
| POST OFFICE ADDRESS: | P.O. Box 878, Jasper, Tn. Marion Co |
| TELEPHONE NUMBER: | (615) 658-6277 |
| M.E.S.A. I.D. NO.: | 40-00524 |
| OPERATOR'S NAME: | Willard Dove |
| OPERATOR'S TITLE: | General Mine Foreman |
| OPERATOR'S ADDRESS: | P.O. Box 878, Jasper |
| OPERATOR'S TELEPHONE NO.: | (615) 942-5111 |

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2. Life of mine is greater than one year.

3. Number of employees:

| | |
|---|---|
| Surface: | 11 |
| Underground: | 115 |
| Total | 126 |

4. Permanent stoppings, belts separation stoppings, overcasts, and undercasts will be constructed of incombustible material such as concrete, concrete blocks, or similar material approved by the Mining Enforcement and Safety Administration. Construction of permanent stoppings consists of dry stacking the blocks and wedging against the roof, with one side plastered with mortar, or with a plastering substance accepted by M.E.S.A. to seal against air leakage. Mandoors, when used in permanent stoppings, shall be constructed of metal, or fire-retarded material. Overcasts will be constructed of concrete block sides with roof. Concrete block will be used for sides, with joints set with mortar. Steel beams with wood, or metal flooring will be used to construct cement forms for the roof of overcasts. An alternate roof of overcast may be made of steel supports and metal covering weighted down with rock dust bags sealed with mortar along the edges. In addition, metal culverts sections may be used for overcasts or undercasts. Regulators will be constructed of concrete blocks dry stacked, wedged against the roof and plastered, with air flow regulated by adding or deleting blocks as needed. Other stoppings, such as temporary and line curtains, will be constructed of approved flame resistant plastic material or similar material approved by M.E.S.A. Temporary stoppings that are used in rooms that are driven less than 600 feet will be substantially constructed to prevent passage of mobile equipment through all but four stoppings, one near the dumping point, and the first three outby the

working face. Seals will be constructed of solid concrete blocks, or if solid blocks are not available standard concrete building blocks with openings filled with mortar. The blocks will be laid in the transverse pattern (See Sketch #1). Recesses will be cut into the ribs so the blocks can be tied into each rib. The face of the seal will be plastered after installed. A gas sampling pipe with shut-off valve, and a U-type drain will be provided for water drainage.

5. Only one fan will be in operation.

6. A crosscut shall be provided at or near the face of each entry or room driven in excess of 50 feet inby the last open crosscut, before the entry is abandoned. Rooms driven 10' to 50 will be ventilated with line curtain.

METHANE AND DUST CONTROL PLAN

1. A description of dust control practices at the following locations:
   a. Water sprays, Venturi or cone type, a minimum of 1 and maximum of 4 if needed, with 50 psig minimum pressure, located to spray onto the falling coal will be installed at all belt transfer points, see map for locations.
   b. Loading points consist of Stamlers loading onto the belt. The Stamlers are equipped with coal breaker, and a water spray is located near the breaker, see map.
   c. No underground crushers.
   d. No underground dumps.
   e. Stopping and check curtain have been installed in the belt and track entry to limit velocity as to keep the dust to a minimum
   f. Face areas, ventilation and water.
   g. Water or air control.
   h. No longwall faces.
   i. No other problem areas.
   j. Water shall be used on the cutting machine to allay respirable dust during the cutting operation, either by the use of water sprays or a wet cutter bar.

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2. See the map for any bleeder system or the equivalent employed for ventilating areas from which pillars have been wholly or partially extracted and abandoned areas.
   a. Bleeder entries and abandoned areas should remain free of obstructions in that the mine is employing a full bolting plan.
   b. Line stoppings used to separate the intake and return during operation of the Section are still intact and are used to control the air. Stopping will be installed in bleeder systems where they are needed to control air flows.
   c. A certified Mine Foreman evaluates the ventilation system performance weekly (including bleeder entry or the equivalent). A flame safety lamp, anemometer, and methane detector (M.S.A. Spotter) are used in evaluations. Smoke tubes and an aspirator will be used when necessary.

## SECTION AND FACE VENTILATION SYSTEM

1. See maps for section and face ventilation system. Line curtain will be maintained to within 10 feet of deepest penetration in the face being cut, mined or loaded during the cycle. Coal is cut and loaded with a continuous mining machine or a cutter and loader, then transported from the face areas to belt conveyors with battery-powered mine tractors and ejector-type mine cars or shuttle cars. Roof bolts are installed with roof bolting mahcines with approved dust-collecting units.

2. The quantity of air reaching the last open crosscut will be a minimum of 9,000 C.F.M. The quantity at the end of line curtains, where coal is being cut, mined, or loaded, will be a minimum of 3,000 C.F.M. Pillars are being mined and a minimum of 9,000, C.F.M. reaching the intake end of pillar line.

3. See maps, belts are isolated with permanent stoppings, and regulators are installed at or near tail blocks and at the portal where belts enter the mine, to limit the velocity of air in the belt entries. Mandoors are used as regulators in belt entry.

4. Permanent stoppings will be used to separate intake and return air courses and shall be maintained to and including the third connecting crosscut outby the faces of entries and rooms that are driven more than 600 feet, except that permission is requested that when the height of the coal is too small for equipment to travel, dangerous roof condition, or irregularities in the bottom are encountered in the second crosscut, then a permanent stopping would be erected in the second crosscut and the third crosscut would be open for travel. Permission is requested to install an air lock between the intake and return air courses, near the dumping point on the sections where shuttle cars are used for haulage (See sketch #3).

5. See maps for escapeway symbols.

## MAPS

1. See maps for property limits and location of proposed workings.

2. See map for location of adjacent workings, none above or below.

3. See map for location of mine openings, fan, direction of air flow and air quantities.

4. See map for one year projection.

5. See maps for items 5 - 24.

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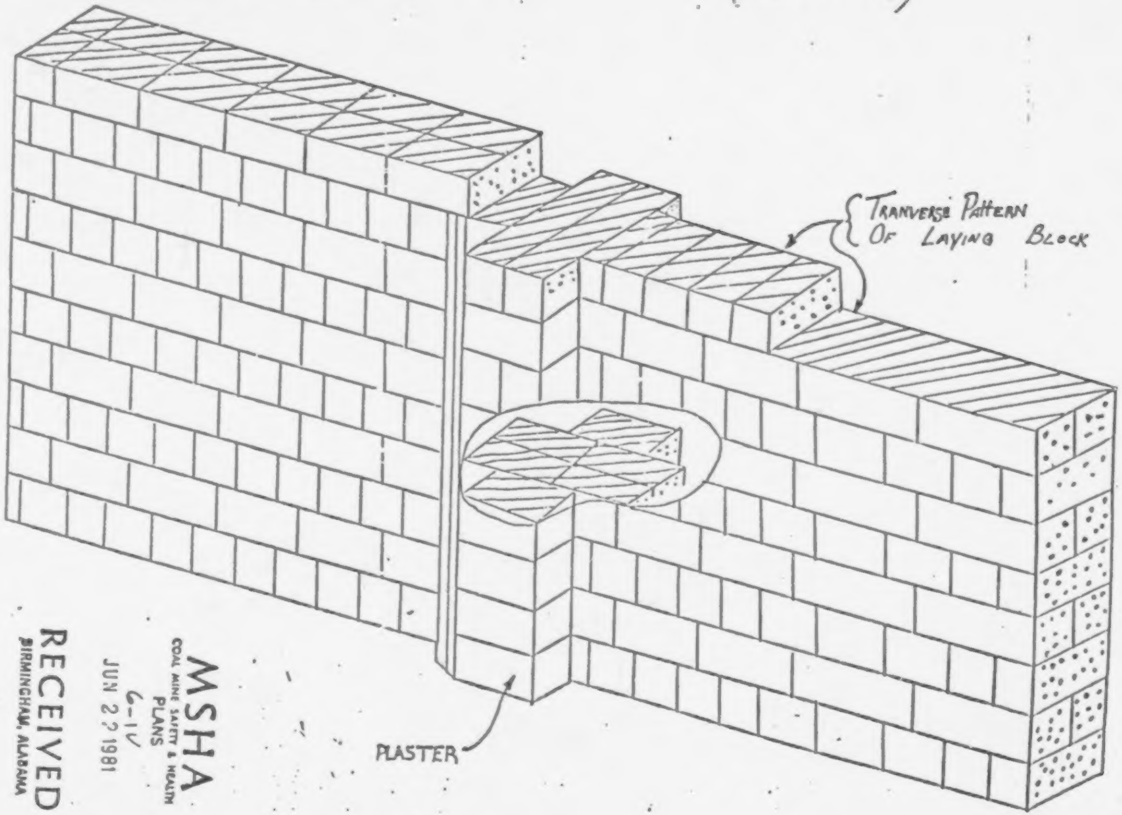
1. A gas sampling pipe equipped with a shut off valve be installed in seals.
2. A U-type drain will be provided for water drainage.

(SKETCH #1)


TRANVERSE PATTERN OF LAYING BLOCK
PLASTER

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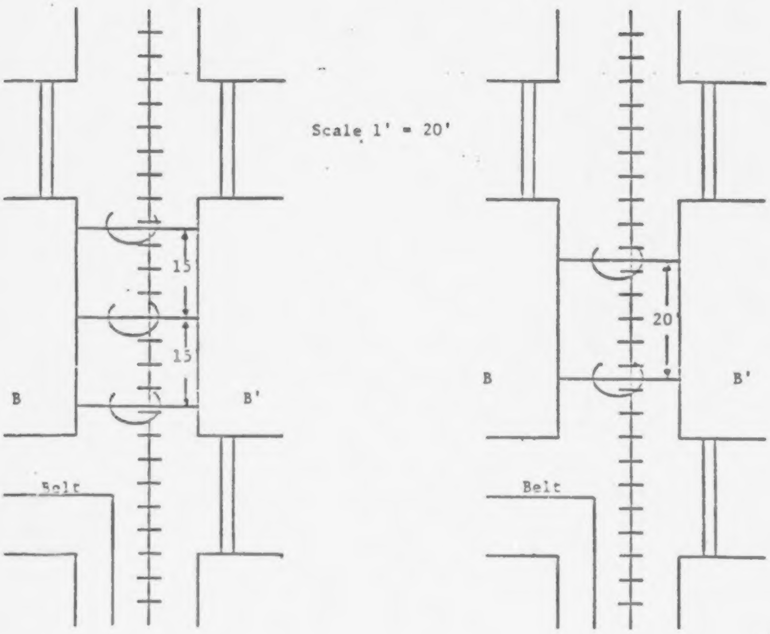
Scale 1' = 20'
15'
15'
B
B'
Belt
20'
B
B'
Belt

SKETCH NO. 2 TYPICAL AIRLOCKS

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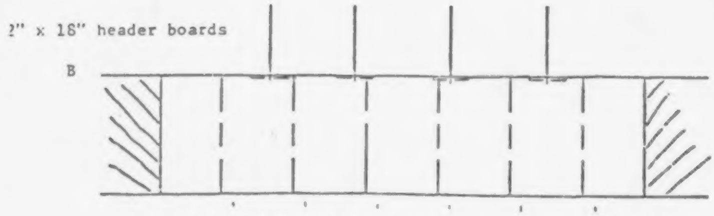
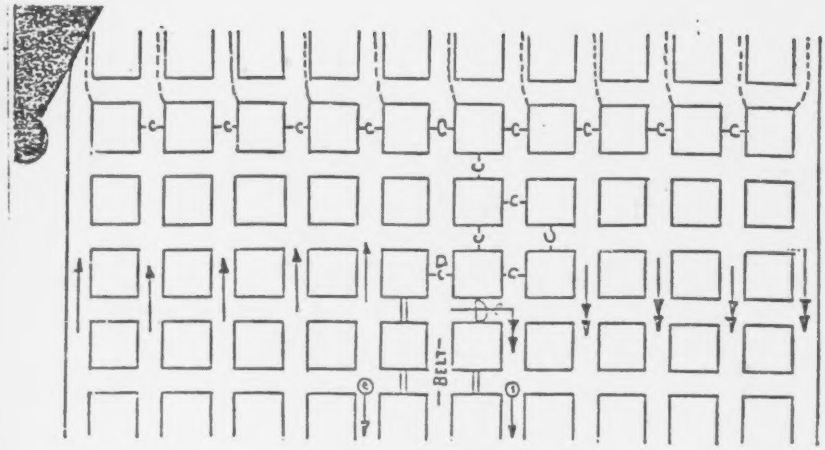

2" x 18" header boards
B
B'
Scale: 1" = 5'

36" belt with a vinyl brattice cover on the cutby side.



SKETCH NO. 3

TYPICAL SECTION & FACE VENTILATION SYSTEM FOR MAIN ENTRIES WHERE SHUTTLE CARS ARE USED FOR HAULAGE.

Minimum volume of air last open crosscut - 9,000 CFM
Minimum volume of air at end of line curtain where coal is cut, mined, or loaded - 3,000 CFM

Line curtain will be maintained to within 10 feet of deepest penetration in all working places where coal is being cut, mined or loaded. Blowing and/or exhaust type face ventilation will be used.

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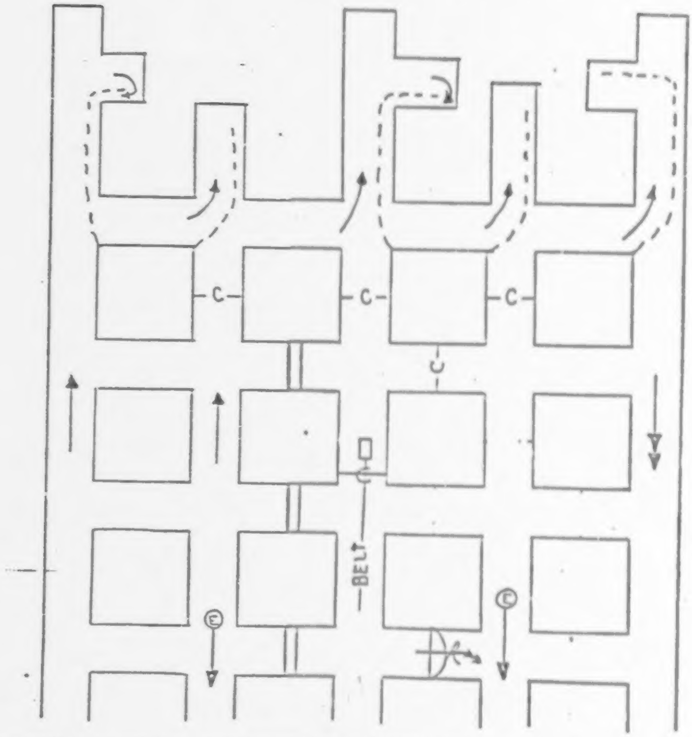
SKETCH NO.



TYPICAL SECTION AND FACE VENTILATION SYSTEM FOR MAIN AND CROSS ENTRIES.
FIVE ENTRY SYSTEM.

Minimum quantity of air last open crosscut - 9,000 CFM.

Minimum quantity of air end of line curtain where coal is cut, mined, or loaded - 3,000 CFM.

Line curtain will be maintained to within ten (10) feet of deepest penetration in all working places where coal is being cut, mined, or loaded. Blowing and/or exhaust type face ventilation will be used.

| | |
|---|---|
| ——→ | Intake Air |
| ——↠ | Return Air |
| ⊙—— | Escapeway |
| ═══ | Stopping |
| —C— | Curtain |
| - - - - | Line Curtain |
| BELT | Belt Line |
| ℓ | Regulator |
| ◡ | Stopping with Door |

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PLANS
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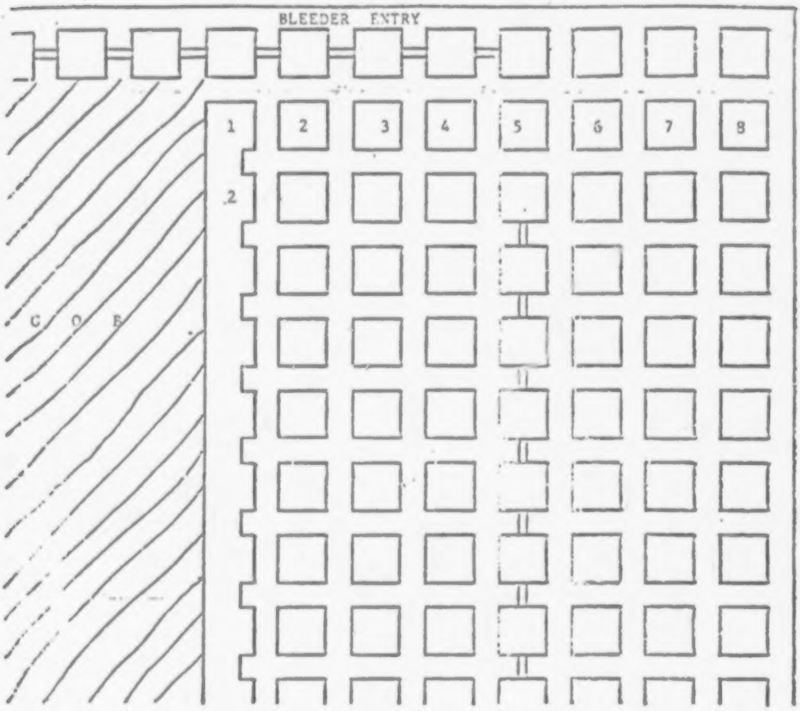

A minimum of one full cut to be left in cross cuts in the barrier pillar when mined on advance.

The cross cuts to be cut through as each line of pillars are mined on retreat

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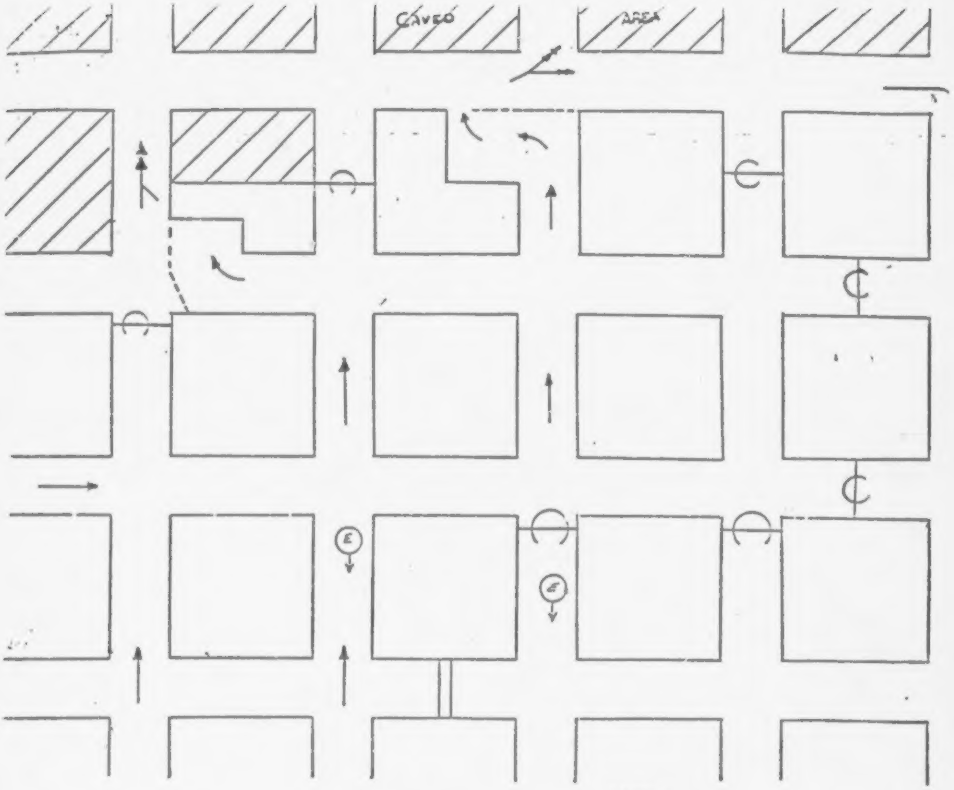

LEGEND

| | |
|---|---|
| INTAKE AIR | — |
| RETURN AIR | → |
| PERMANENT STOPPING | = |
| CHECK CURTAIN | ⊂ |
| LINE CURTAIN | - - - |
| ESCAPEWAY | Ⓔ |

LINE CURTAIN WILL BE MAINTAINED TO WITHIN 20 FEET OF THE AREA OF DEEPEST PENETRATION OF THE WORKING FACE DURING LOADING, CUTTING AND MINING. EXHAUST TYPE FACE VENTILATION WILL BE USED.

TYPICAL SECTION AND FACE VENTILATION FOR OPEN END PILLAR MINING.

MINIMUM VOLUME INTAKE END OF PILLAR LINE: 9,000 c.f.m.
MINIMUM VOLUME END OF LINE CURTAIN: 3,000 c.f.m. or
60 c.f.m. MEAN VELOCTIY WHICH EVER IS GREATER.

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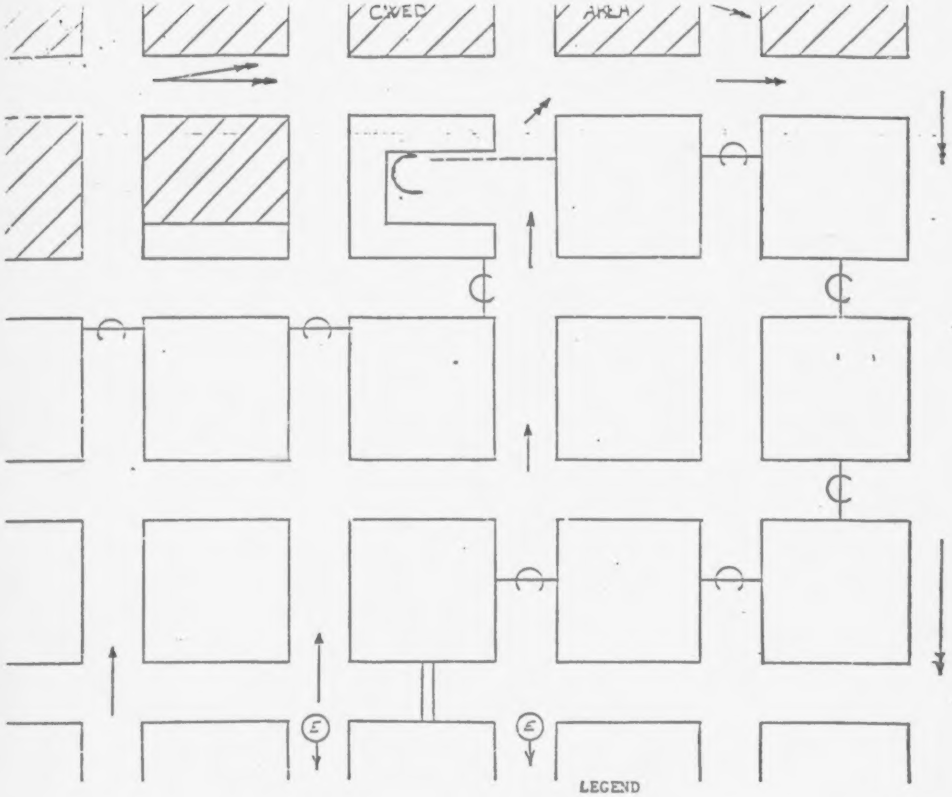

LEGEND

INTAKE AIR →

RETURN AIR ↠

PERNANENT STOPPING ═

CHECK CURTAIN

LINE CURTAIN - - -

ESCAPEWAY Ⓔ

LINE CURTAIN WILL BE MAINTAINED TO WITHIN 10 FEET OF THE AREA OF DEEPEST PENETRATION OF THE WORKING FACE DURING LOADING, CUTTING, AND MINING. EXHAUST TYPE FACE VENTILATION WILL BE USED.

TYPICAL PILLARING SECTION AND FACE VENTILATION FOR SPLIT PILLAR MINING.

MINIMUM VOLUME INTAKE END OF PILLAR LINE: 9,000 c.p.m.
MINIMUM VOLUME END OF LINE CURTAIN: 3,000 c.p.m. or 60 c.m.p. MEAN VELOCITY WHICH EVER IS GREATER.

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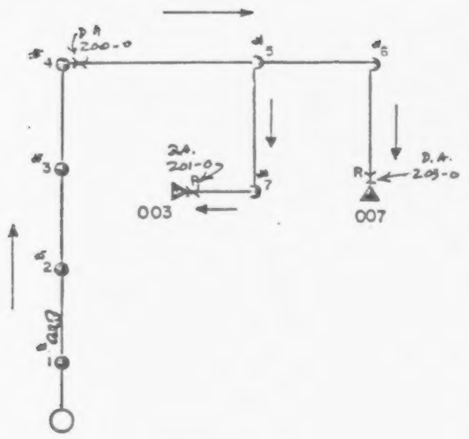
# MINE NO. 21

GRUNDY MINING CO. INC.
ID 40-00524 USMB


#4
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201-0
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003
R
D.A.
205-0
007
#2
#1

| | |
|---|---|
| ← | DIRECTION AIR CURRENT |
| ○ | MINE OPENING |
| ● | BELT TRANSFER POINT |
| X | DESIGNATED AREA |
| R | AIR REGULATED TO RETURN |
| ▲ | SECTION DUMPING POINT |
| 00__ | SECTION NUMBER |

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## Selection Sheet For Designated Areas

Mine #21 Mine ID 40-00524

Company Grundy Mining Company, Inc.

| | To Be Filled In By MSHA |
|---|---|
| Location Of Designated Area: Junction Northeast & East Mains Belt Lines: 15± Feet downwind from No. 4 header.<br>Position Of Sampling Instrument Within Designated Area: At normal breathing level but not less than 1 foot from the roof or rib nor within 2 feet of any obstruction. | Designated Area ID: 200-0 |
| Location Of Designated Area: West Belt Line: Regulator 50 ± Feet upwind from the center of the inter-section, where air is directed into the return. (003)<br>Position Of Sampling Instrument Within Designated Area: Same as above. | Designated Area ID: 201-0 |
| Location Of Designated Area: South Main Belt Line: 007 regulator, 50± feet upwind from the center of intersection where air is directed into returns.<br>Position Of Sampling Instrument Within Designated Area: Same as 1 above. | Designated Area ID: 203-0 |
| Location Of Designated Area: Mine Supply Route: Parallels belt line entries, see map.<br>Position Of Sampling Instrument Within Designated Area: Within 36 inches of operators' controls on portal bus. | Designated Area ID: 100-0 |
| Location Of Designated Area:<br>Position Of Sampling Instrument Within Designated Area: | Designated Area ID: |

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The CHAIRMAN. Should there have been a ventilation survey conducted before the mine was reopened, as Mr. Componation recommended?

Mr. SPICER. I am not aware that Mr. Componation recommended it to me. There was a ventilation survey conducted shortly after the explosion, and the recommendations of our technical support group were incorporated, and the company was made to do what was required.

The CHAIRMAN. But not before—you did not think it was necessary, or did you think it was necessary, that a ventilation survey be conducted?

Mr. SPICER. Senator, I did not think of it at all. If I had thought it was necessary, I would have had it conducted. What I am saying is I do not recollect Mr. Componation saying to me that it needed to be done.

The CHAIRMAN. Was a ventilation survey conducted after the mine was opened?

Mr. SPICER. Yes, sir.

The CHAIRMAN. Did you see it?

Mr. SPICER. Yes, sir.

The CHAIRMAN. And is that the survey? (Handing document.)

Mr. SPICER. I am sure it is, yes, sir.

The CHAIRMAN. Did you discuss it with Mr. Dixon to tell Mr. Layne to delete that survey from his criminal investigation report?

Mr. SPICER. I do not remember doing that, no, sir.

The CHAIRMAN. Well, you certainly would if you told him that. It is not something that you would forget very easily.

Mr. SPICER. I do not know, Senator, why I would have told him to delete it from his investigation report except that the investigation report that Mr. Layne conducted and wrote was the investigation of the company, not us. I was not trying to hide anything.

The CHAIRMAN. Well, you just have to ask yourself why he stated that you did ask him to delete it, and there is no indication that that report was part of the record.

Mr. SPICER. I do not recollect—I do not think I said that.

[Information supplied for the record follows:]

# Investigative Report P212-V118

Grays Creek No. 21 Mine - ID 40-00524
Grundy Mining Company, Incorporated
Whitwell, Marion County, Tennessee

June 14-24, 1982

by

Robert A. Haney 1/, Gary E. Smith 1/, Charles D. Campbell 1/

and

R. Keith Younger 2/

## INTRODUCTION

From June 14-24, 1982 an absolute pressure-air quantity mine ventilation investigation was made at Grays Creek No. 21 Mine, Grundy Mining Company, Incorporated, owned by Tennessee Consolidated Coal Company, located near Whitwell, Marion County, Tennessee. The investigation was conducted by the Ventilation Division, Pittsburgh Health Technology Center and Coal Mine Safety and Health District 7. Appendix I is a list of MSHA participants.

The Investigation was requested by the Subdistrict Manager, Coal Mine Safety and Health District 7, Birmingham, Alabama. The purpose was to gather sufficient data to review the existing mine ventilation system and to provide a base for digital computer simulations of proposed changes to the system. This report summarizes the results of the investigation.

## GENERAL INFORMATION

Grays Creek No. 21 Mine was opened by nine drifts into the 39 inch thick Sewanee coalbed. The nine drift openings included five intake entries, one belt entry and three return entries. Two of the return drifts were stopped off inby the surface openings. The mine employed approximately 120 underground employees on one maintenance and two production shifts, producing approximately 1200 tons of coal per day from three conventional mining sections. Coal faces were undercut, drilled, and shot. Electric loading machines were used to load coal onto either electric shuttle cars or battery ram cars for transportation to the section conveyor belts. Coal was transported from the sections to the surface by a conveyor belt haulage system. Personnel and supplies were transported from the surface to the sections by battery powered rail vehicles. Off rail transportation was provided by battery powered rubber tire vehicles. Based on the analysis of vacuum bottle air samples collected at the mine fan during the investigation, the daily methane liberation rate was 18,000 cubic feet.

1/ Mining Engineer, Pittsburgh Health Technology Center, Pittsburgh, PA
2/ Industrial Hygienist, Pittsburgh Health Technology Center, Pittsburgh, PA

## MINE VENTILATION

Mine ventilation was induced by a Jeffrey 8HU-72 Aerodyne Mine Fan installed at the surface and connected by suitable ductwork to a return drift opening. The fan was belt driven by a 460 VAC, 300 horsepower electric motor. At the time of the investigation the motor, which had a current rating of 350 Amps, was drawing 200 Amps. The fan was operating at a speed of 1200 rpm, resulting in a blade tip speed of approximately 22,600 fpm. The fan exhausted approximately 166,000 cfm of air from the mine at a fan rated static pressure of 6.90 inches of water and a density of 0.070 pounds per cubic foot. The air quantity and pressure measurements indicated the fan was operating between the 5B-5S and the 6B-6S blade positions. Figure 1 shows the manufacturers fan characteristic curves for these two blade positions along with the mine resistance curve and the measured fan operating point. This figure indicates that the fan is operating in the stable portion of the fan performance curve and that an increase in fan pressure of approximately 1.5 inches of water would move the fan operation into the stall zone of the fan performance curve.

## MINE AIR QUANTITY AND QUALITY

Figure 2 is a single line airflow diagram showing mine airflow direction, air quantities, and total ventilating pressures throughout the mine. The ventilating pressures are given in inches of water and the air quantities are given in 100,000 cfm units (100,000 cfm is shown as 1.00). The pressures and quantities are balanced and are suitable for computer simulation of mine ventilation system modifications. Also shown on figure 2 are the results of analysis of vacuum bottle air samples collected at various locations in the mine. Results of the analysis showed the mine air quality to be adequate with the highest methane concentration being 0.06 volume percent. Also shown are the analysis of vacuum bottle air samples of the environment behind the various sets of seals in the mine. The lowest oxygen concentration behind the seals was 18.60 volume percent and the highest methane content was 0.07 volume percent.

Airflow entered the mine through the one belt and five intake drift openings. Airflow was coursed to the three active sections through a set of parallel intake entries. Each active section was ventilated on a separate split of air. In addition to the three active sections, separate air splits were provided for ventilation of the 5 Right gob area and the gob and idle area north and west of the main intake and return entries. Stoppings separating intake, return, and belt entries were constructed from hollow core concrete blocks. The blocks were dry stacked and plastered. Overcasts were constructed from rail and sheet metal decking supported on concrete block walls.

Belt airflow direction on both the 003 Section and 007 Section was away from the face. Section 007 belt air traveled from the face to the mouth of the section, where it met with incoming air on the main belt. Belt air from the main belt and the 007 belt traveled through the 003 belt entry to the 35th crosscut inby the 003 intake overcast. There it combined with belt air traveling away from the 003 face and entered the return through the crosscut where a stopping between the belt and return entries had been crushed out. This stopping was reportedly repaired following the investigation.

A summary of the distribution of the total air volume induced into the mine is as follows:

1. Airflow at the last return stopping of each production unit.

| | | |
|---|---|---|
| A. | 003 Section | 13,000 cfm |
| B. | 007 Section | 10,000 |
| C. | 008 Section | 11,000 |
| | | 34,000 cfm (20 percent) |

2. Air leakage from intake to return entries.

| | | |
|---|---|---|
| A. | Drift openings to 5 Right | 8,000 cfm |
| B. | 5 Right overcasts | 28,000 |
| C. | 5 Right to mouth of 003 Section | 17,000 |
| D. | Mouth of 003 Section | 4,000 |
| E. | 003 Section | 16,000 |
| F. | 007 Section | 13,000 |
| G. | 008 Section | 12,000 |
| | | 98,000 cfm (60 percent) |

3. Intake air splits not used to ventilate active units.

| | | |
|---|---|---|
| A. | 5 Right Gob Area | 21,000 cfm |
| B. | North end of Mains | 13,000 |
| | | 34,000 cfm (20 percent) |
| | Total | 166,000 cfm (100 percent) |

The airflow distribution summary indicates that approximately 20 percent of the 166,000 cfm of air that enters the mine is used to ventilate the active sections. An additional 20 percent of the air is used to ventilate idle or abandoned areas and the remaining 60 percent of the airflow was lost as leakage from intake to return entries. Approximately 29 percent of the leakage occurred at the set of overcasts at 5 Right and 42 percent of the leakage occurred along the stopping lines of the three active sections. The remaining leakage (29 percent) occurred between the main intake and return entries from the mouth of the mine to the mouth of the 003 and 007 Sections.

## PRESSURE GRADIENTS AND AIRFLOW REGULATION

Figure 3 shows the ventilation pressure losses incurred by the air current as it flows to and from the 3 active sections in the mine. The gradient shown was constructed by plotting the total ventilation pressure measured at key locations against the distance of that station from the intake or return opening. The slope of the line on the graph indicates the pressure loss to length of airway; therefore a steep slope on the pressure gradient indicates an area in the mine with either high resistance to airflow or a high airflow quantity. Steep pressure gradient areas are of primary concern when locating portions of the mine where improvements in terms of reduced mine resistance, would have the greatest effect.

Airflow for Sections 003 and 007 share common intake and return entries from the section mouths to the drift openings, and therefore have the same pressure gradients except for the area inby the section mouths. Inby the section mouths, the intake and return pressure gradients for both sections have a gradual slope; this indicates that these airways are adequate for the airflow directed through them. Return entries from both sections meet outby the 007 regulator. The 007 regulator, which had a pressure drop of 0.06 inches of water, was constructed by a partially knocked out block stopping. The 003 Section was an open split.

During the survey a pressure drop of 0.01 inches of water was measured from the 007 return to the 003 intake. This pressure was measured across an airlock door that separated the two sets of entries. With the airlock doors closed there was no measurable flow from the 007 return to the 003 intake, however if the doors were opened or the airlock stoppings crushed out there would be flow from the 007 return to the 003 intake.

Regulation of airflow through the 5 Right gob area was provided by a set of stoppings built across the entries of the 003 Section. These stoppings were constructed from dry stacked hollow core concrete blocks, allowing airflow of approximately 21,000 cfm at a pressure drop of 0.23 inches of water.

The pressure gradient for 008 Section is also shown on figure 3. The intake pressure gradient to this section had a gradual slope. There were two regulators on the 008 Section, constructed by hanging conveyor belt across the entry. Pressure drops across these regulators were 0.25 and 0.85 inches of water.

Air that ventilated 008 Section, along with a split of air that ventilated the west side of the mains, was directed across a set of overcasts at 5 Right. A regulator was located on the outby side of the track overcast and had a pressure drop of 1.05 inches of water. Pressure lost due to resistance across these overcasts was approximately 0.93 inches of water.

The slope of the return pressure gradient from 6 Right to the outside was the steepest part of the pressure gradient, other than regulators. Of the 6.90 inches of water pressure induced by the fan, 5.17 inches of water were lost in the return entries between 6 Right and the fan. This was due to roof falls observed in this area and the practice of loading gob material into crosscuts. A restriction was also caused by reducing the number of return entries from three to one near the return drift opening. The 0.23 inches of water regulation indicated in the return inby 5 Right was caused by overcasts and ventilation controls that had not been removed following mining in this area.

These pressure gradients show that the limiting factor on the ventilation system was the return airways between 6 Right and the fan. This indicates that without reducing airway resistance in this area, significant improvements to the ventilation system cannot be made.

## DISCUSSION

At the time of the investigation, No. 21 Mine reportedly had 4 to 6 months of development work remaining. At this time pillars would be extracted from the 003 and 007 Sections and chain pillars would be extracted along the main intakes and returns. The estimated life of the mine was reportedly 2 to 3 years.

During the development of No. 21 Mine, adjacent abandoned and active mines had been cut into on several occasions. Seals had been constructed to separate No. 21 Mine from these areas. All of the seals separating No. 21 Mine from other mines had pressure differentials from the adjacent mine into No. 21 Mine. These pressure drops are shown on figure 2. Additionally a set of seals had been constructed at the northern end of the main intake and return to isolate a gob area from the rest of the mine. A water seal reportedly existed in the 5 Right gob area approximately 1500 feet from the return entries. This water seal isolated the eastern portion of the 5 Right gob area from the rest of the mine.

In order to insure that a mine ventilation system is functioning properly, air quantity and quality measurements should be taken to evaluate the airflow into and out of an area of a mine. During mine development, rock from "squeeze" or "want" areas had been gobbed into crosscuts. This practice reduced the number of entries that could be used as air courses and by limiting access to these entries, reduced the ability to evaluate the ventilation system. Should a roof fall occur in one of the entries that is currently travelable, a major restriction to the airflow could occur. Additionally, because of this practice, should a roof fall occur in a return escapeway it would be difficult to redirect the escapeway route. In addition to evaluating the ventilation of intake and return entries in a mine, the performance of bleeder systems designed to ventilate gob or abandoned areas must also be evaluated. When bleeder systems are open or safe to travel, measurements can be taken along the entries of the bleeder system. When bleeder entries are not accessible for evaluation, an alternative method should be established to indicate where airflow is entering or leaving a gob area of the mine and a location should be established to evaluate the quality of the airflow passing through the gob area.

Balanced airflow quantities and ventilating pressures indicated that there was airflow through the 5 Right and 6 Right gob areas. However, because of the inaccessibility of the areas where this airflow enters the main return, there was no single location where an evaluation of the quality of air passing through the gob areas could be made.

Airflow was entering and leaving the gob area and idle area on the north and west side of the main intake entries and the gob area west of the 003 Section. A location was available where this airflow could be evaluated; however, the mine development method used in these areas does not insure that airflow passes through or around these areas. The air quality measurement taken at the outlet of these areas may only be indicative of the airflow quality passing along the outby perimeter of the area.

In order to function properly a bleeder system must remain open to airflow. Little additional roof support was observed in entries being developed as bleeder entries or in travelways to bleeder evaluation points. As a result bleeder entries deteriorate and bleeder evaluation points must be established. When the safety of a bleeder evaluation point deteriorates, the point is moved outby. This practice makes it difficult to obtain an evaluation of a bleeder system performance. Sufficient roof support should be provided while developing bleeder entries and in travelways to bleeder evaluation points to assure safe access to these areas.

## CONCLUSIONS

1. At the time of the investigation the total air volume induced by the mine fan was 166,000 cfm at a fan rated static pressure of 6.90 inches of water.

2. Approximately 20 percent of the total mine airflow reached the three active sections.

3. The major portion of airflow leakage from intake to return entries occurred at the 5 Right overcasts and along the stopping lines of the three active sections.

4. Airflow direction in the belt entry of 003 and 007 Sections was away from the face of the section.

5. Of the 6.90 inches of water pressure induced by the fan, 5.17 inches of water were lost in the return entries between 6 Right and the fan.

6. Regulation was provided on Sections 008 (1.10 inches of water) and 007 (0.06 inches of water), while 003 was an open split.

7. At the time of the investigation the pressure drop on all seals was from the sealed area into No. 21 Mine.

8. The quality of the airflow passing through the 5 Right and 6 Right gob areas could not be effectively evaluated.

9. Air quality measurements taken outby the gob area north of the main intake, the idle area west of the main intakes, and the gob area west of the 003 Section gives little indication of the airflow through these areas.

10. Sufficient roof support was not provided while developing bleeder entries, or in travelways to bleeder evaluation points, to insure that they would remain open for travel.

11. The highest methane concentration detected in the mine during the investigation was 0.06 volume percent. This was measured in the return of the 007 Section.

12. Analysis of air samples collected from sealed areas adjoining the mine indicated methane concentrations less than 0.07 volume percent and oxygen concentrations greater than 18.60 volume percent.

## RECOMMENDATIONS

1. The resistance to airflow in the return entries between 6 Right and the fan should be reduced.

2. A method should be established to obtain a positive control of the airflow in the belt entries.

3. A method should be established to evaluate the airflow through the gob areas at 5 Right and 6 Right.

4. Either ventilaion controls should be established to insure that airflow is directed through the gob area north of the main intakes, the idle areas west of the main intakes, and the gob area west of the 003 Section or these areas should be sealed.

5. Additional roof support should be provided in the bleeder entries, and in travelways to bleeder evaluation points, to assure that these areas remain accessible.

## APPENDIX I

MSHA personnel participating in
the ventilation investigation at
Grays Creek No. 21 Mine, June 14 - 24, 1982

Ventilation Division, Pittsburgh Health Technology Center

| | |
|---|---|
| Robert A. Haney | Mining Engineer |
| Gary E. Smith | Mining Engineer |
| Charles D. Campbell | Mining Engineer |
| R. Keith Younger | Industrial Hygienist |

Coal Mine Safety and Health, District 7

| | |
|---|---|
| Jerry Early | Coal Mine Inspector |
| Tommy D. Frizzell | Coal Mine Inspector |
| Billy C. Layne | Surface Mine Inspector |
| Clyde J. Layne | Coal Mine Inspector |
| Johnny L. McDaniel | Coal Mine Inspector |

## ACKNOWLEDGMENT

The cooperation and courtesies extended by mine management during this investigation are greatfully appreciated.

R.A. Haney
R. A. Haney

G. E. Smith

C. D. Campbell
C. D. Campbell

R. K. Younger
R. K. Younger

Approved by:

James L. Banfield, Jr.,
Chief, Ventilation Division

NO. 341-G DIETZGEN GRAPH PAPER 10 X 10 PER INCH
DIETZGEN CORPORATION MADE IN U.S.A.

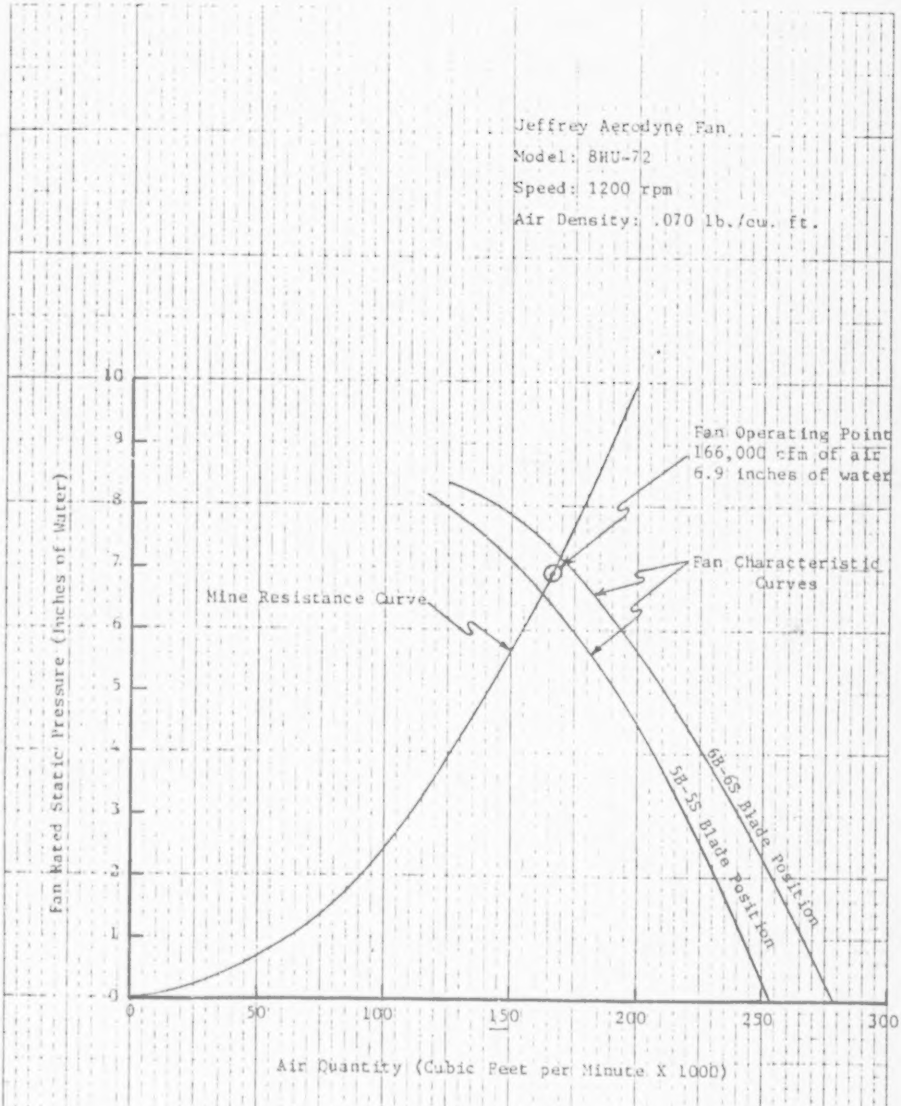

Figure 1 - Fan Characteristc and Mine Resistance Curves for Grays Creek No. 21 Mine, June, 1982

NO. 340-10 DIETZGEN GRAPH PAPER
10 X 10 PER INCH

EUGENE DIETZGEN CO.
MADE IN U. S. A.

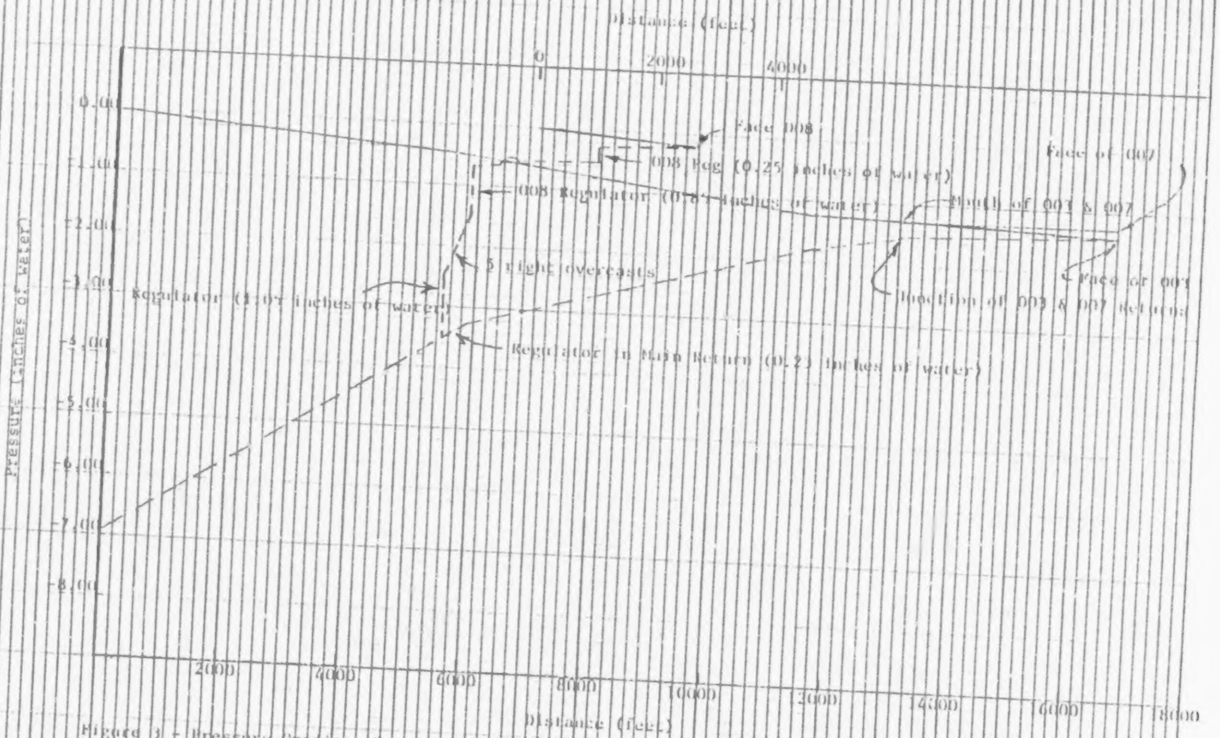

Figure 3 - Pressure Gradient Grays Creek No. 21 Mine, 003, 007, and 008 Sections - June 1982

The CHAIRMAN. Did you downgrade the order that had been issued because the bleeder system was inadequate?

Mr. SPICER. I think, sir, you are referring to the health and safety conference that was held with the company officials after the explosion.

The CHAIRMAN. Correct.

Mr. SPICER. And they wanted to discuss three citations. Two of the citations were changed from "High Negligence" to "No Negligence" based on that conference, based on information that the company presented at that time. It was persuasive and at that time I was convinced that the company was not negligent in either of those areas.

In reviewing that case yesterday after being briefed on the testimony, I have a difficult time explaining one of them.

The CHAIRMAN. Well, how you stated it is exactly how it was reported during our hearing yesterday. The order had a charge of a high degree of negligence, and we included that document in the record, and that was changed to none. I have the handwritten document here.

Mr. SPICER. That is true, sir. I had three other people, three subordinate people, with me. We met with the company, we talked about it. Yesterday I got this document, and I looked at it.

Now, what I am saying is that when we did this, the discussion led me to believe that this should be done. One of the citations when I look at it right now—and that is the second one on the first page, where the company removed the men to a certain point—I have no reason now—and I think I made the right decision at that time, that there was no neglect in their moving people to where they moved them, because they thought that was a safe place—it turned out that it was not, but they thought it was.

The first one, where I say the company correctly maintained there was no negligence on their part, since all normal checks which they had performed did not reveal the malfunctioning bleeder system, at the time, I thought that that was a good decision. I am second-guessing myself now, Senator.

[Information supplied for the record follows:]

Conference Worksheet

**U.S. Department of Labor**
Mine Safety and Health Administration Event Number 5013531 AFA

1 Date of Conference: 08/26/82 2:00 p.m.

2 Operator Name: Grundy Mining Company, Incorporated

3 Type of Conference: ☐ A Closeout ☒ B Health and Safety

4 Conference Format: ☒ A In-person ☐ B Telephone

5 Mine ID: 40-00524

6 Mine Name: No. 21

7 Attending for MSHA (names and positions): J. L. Spicer, District Manager
John E. Weekly, Subdistrict Manager

7. Max H. Condra, Sr., CMI Supervisor
Joseph W. Pavlovich, CMI

☐ A Advised of H&S Conference Right
☐ B Party Status Requested

8 Attending for Operator (names and positions): HELLIS - SAFETY DIRECTOR
RICK CUSICK - CO-ATTORNEY

9 Attending for Miners' Representative (names and positions): N/A

☐ A Advised of H&S Conference Right
☐ B Party Status Requested

10 Inspector/District Manager Comments

CITATATION NO. 0757824 WAS MODIFIED TO A 104(a) CITATION. THE COMPANY CORRECTLY MAINTAINED THERE WAS NO NEGLIGENCE ON THEIR PART SINCE ALL NORMAL CHECKS, WHICH THEY HAD PERFORMED DID NOT REVEAL THE MALFUNCTIONING BLEEDER SYSTEM.

CITATION NO 0757825 WAS MODIFIED TO A 104(a) CITATION, BECAUSE NO NEGLECT ON THE PART OF THE COMPANY COULD BE SHOWN

9/13/82
cc:
J. E. Weekly
Files

11 Citation/Orders Discussed at Conference

| A Number of Citations/Orders | B Number of S&S | C Number Identified for Special Assmt. Review | 12 Results (1) Number Changed | 12 Results (2) Number Vacated | 13 Modification Issued to Change: Number of Gravity Changes | Number of Negligence Changes | Number of S&S Changed | Number of Special Assmt. Status Changed |
|---|---|---|---|---|---|---|---|---|
| 3 | 3 | 3 | 2 | | | 2 | | |

MSHA Form 7000-12, June 82

Exhibit 27

U.S. DEPARTMENT OF LABOR—MINE SAFETY AND HEALTH ADMINISTRATION
MSHA FORM 7000-3 (Jun 78)

☐ CITATION (SEE REVERSE) ☒ ORDER OF WITHDRAWAL (SEE REVERSE) DATE 12/15/81 (MO DA YR) TIME 1500 (24 HR CLOCK) 0757825

SERVED TO Mr Hollis Rogers OPERATOR Grundy Mining Company, Inc.

MINE No. 21 Mine MINE I.D. 40-00521-___ (CONTRACTOR)

TYPE OF ACTION 104-D-1,___-_-_ VIOLATION OF SECTION ___-_-_ OF THE ACT OR

PART AND SECTION 75.0308-_____ OF TITLE 30 CODE OF FEDERAL REGULATIONS. OFFICE USE ONLY DATE MAR 1 2 1

TYPE OF INSPECTION AEA ☒ S AND S (SEE REVERSE) ☐ WN CODES _/_ _10 15 ATD __/__/__

CONDITION OR PRACTICE More than 1.5 percent methane was present in the 003 section on December 8, 1981. All persons were not withdrawn to a safe area from the area endangered by methane from an interconnected abandoned gob area.

AREA OR EQUIPMENT The 003 working section

INITIAL ACTION ☐ NOTICE ☒ CITATION ☐ ORDER NO. 0757821 DATED 12/15/81 (MO DA YR)

TERMINATION DUE DATE 01/07/82 (MO DA YR) TIME 0700 (24 HR CLOCK) SIGNATURE ▶ Joseph W. Pawlowic 1834 (AR)

ACTION TO TERMINATE

DATE __/__/__ (MO DA YR) TIME ____ (24 HR CLOCK) SIGNATURE ▶ ___ (AR) ☐ SEE CONTINUATION FORM

---

U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
MSHA FORM 7000-3a (Jun 78)

(original issue) DATED 12/15/81 (MO DA YR) No 0757825-1

☒ SUBSEQUENT ACTION ☐ CONTINUATION ☐ CITATION ☒ ORDER DATE 01/07/82 (MO DA YR) TIME 0700 (24 HR CLOCK)

SERVED TO Mr Hollis Rogers - Safety Director OPERATOR Grundy Mining Company, Inc.

MINE No. 21 MINE I.D. 90-00521-___ (CONTRACTOR)

JUSTIFICATION FOR ACTION CHECKED BELOW Measures were taken by management to ensure that methane accumulations would not occur in this area by opening the bleeders to provide adequate air flow.

☐ EXTENDED TO DATE __/__/__ (MO DA YR) TIME ____ (24 HR CLOCK) ☐ VACATED OFFICE USE ONLY CODES _/_ _10 16 ATD ~~MAR 1 8 1982~~

☒ TERMINATED ☐ MODIFIED ☐ SEE CONTINUATION FORM DATE

TYPE OF INSPECTION AEA

SIGNATURE ▶ Joseph W. Pawlowic 1834 (AR)

[redacted]

Continuation

Mine Safety and Health Administration

1. Dated (original issue) 12 13 81 Mo Da Yr
2. Citation/Order Number 0757825-

3. Subsequent Action ☑ Continuation ☐
4. Date 07 20 82 Mo Da Yr
5. Time (24 hr. clock) 1430
6. Served To Mail Out

7. Operator Grundy Mining Co. Inc.
Mine No. 21
8. Mine ID 40-00524- (Contractor)

Justification For Action

Order No. 0757825 is modified to include ~~the~~ inspector's evaluation according to the new 30 CFR Part 100, Civil Penalty Criteria:

1. Negligence - (High); 2. Gravity - A. Occurrence (Occurre
B. Injury or Illness (Fatal) C. Number of persons effected (thirteen)

9. Extended To ☐ 9a. Date Mo Da Yr 9b. Time (24 hr. clock)
10. Vacated ☐ Terminated ☐ Modified ☑
11. See Continuation Form ☐
12. Type of Inspection DCC
13. Event Number
14. Signature Raymond H. Vaughn
AR Number 21833

MSHA Form 7000-3a, Apr 82 (Revised)

Inspector's Statement

U.S. Department of Labor
Mine Safety and Health Administration

Mine ID 40-00524-[illegible] (contractor)

Day (mo/da/yr) 121581

Number 0757825

Violation of Part and Section 75.0308-[illegible] of Title 30 Code of Federal Regulations

Section [illegible]-[illegible]-[illegible] of the Act

▶ **Negligence** (elaborate in remarks)

1 The condition or practice cited

☐ a could not have been known or predicted or occurred due to circumstances beyond the operator's control. Explain in remarks

☐ b had been recorded prior to shift during which it was cited and should have been corrected. If so, state time and date recorded in remarks

☒ c should have been known to operator. In remarks show facts on which you base this conclusion

☐ d was known by operator and should have been corrected. In remarks show facts on which you base this conclusion

☐ e this type violation occurs frequently at this mine. Explain in remarks

☐ section foreman and/or any other supervisory personnel made statements indicating that he/they caused, observed, or knew about violation. If so, identify person and state what was said in remarks

☐ g other miners made statements regarding the violation. If so, identify miners and what was said in remarks

Remarks (identify by item) (reverse may be used) Jackie Tate, Foreman, reported from the 003 sectic to Roy White, Mine Foreman, and Jimmy Rogers, Assistant Superintendent, prior to the explosion on 7:00 a.m. to 3:00 p.m. shift of 12-8-81 that there was 5 percent methane ir the 003 section. White and Rogers arrived on this section prior to the explosion. Elec face equipment was not being operated. Miners were withdrawn from the immediate face ar but were not withdrawn to a safe place free from the risk of $CH_4$ migration and exposure $CH_4$ hazards. Investigation revealed that these men were not actively engaged in work

(CONTINUED BELOW)

▶ **Gravity**

1 The occurrence of the event against which the cited standard is directed was

☐ Improbable ☐ Imminent

☐ Probable ☒ Occurred

List facts on which you base your conclusion

By not removing men to a safe place, miners were exposed to explosion. Had miners been removed to safe place, the smoking violation would not have created an ignition source.

2 What other events would have to occur before an accident would have resulted from the violation?

3 The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be

☐ No lost days (degree 6) ☐ Lost work days or restricted duty (degree 3-5)

☒ Fatal (degree 1) ☐ Permanently disabling (degree 2)

Explain

13 miners died as a result of the explosion Had they been removed to a safe place, fata ities would not have occurred.

4 Number of persons who would be affected if the event occurred or were to occur

5 Area of the mine that would have been affected were the event to occur

☐ Working face ☐ Entire Mine

☐ Working section ☐ Other (specify)

6 Conditions or circumstances which might have increased the likelihood or severity of the event

related to abating the dangerous conditions

235-1177 Paige Jackson

▶ **Good Faith**

1 The condition was corrected

☐ within the time allowed for abatement including extensions

☒ after a withdrawal order was issued

2 Management took extraordinary steps to gain compliance by

Remarks

Inspector's Signature

Joseph W Pavlovich

AR 1834

MSHA Form 7000-4 Oct 78

Exhibit 05-2

## REVIEW OF CITATIONS AND ORDERS OF WITHDRAWAL
## BY ISSUING INSPECTOR AND SUPERVISOR

MSHA Office JASPER TENNESSEE

Mine I.D. 40-00524

Company Name GRUNDY MINING COMPANY, INC

Location WHITWELL MARION TENNESSEE
Town County State

Citation/Order No. 0757825 Date 12-15-81

Do you recommend a special investigation under Section 110 of the Act?
x yes ____ no

If yes, why? THIS CONDITION CONTRIBUTED TO A MINE EXPLOSION WHICH RESULTED IN FATAL INJURIES TO THIRTEEN EMPLOYEES

Issuing Inspector Jarrel W. Rowland

Supervisor John E. Welkly

Date Reviewed 2-25-82

Mine Citation/Order Continuation TBU P 16 L 15 **U.S. Department of Labor**
Mine Safety and Health Administration

1. Dated (original issue) 12 15 81 (Mo Da Yr) 2. Citation/Order Number 0757823-04

3. Subsequent Action ☒ Continuation ☐ 4. Date 08 26 82 (Mo Da Yr) 5. Time (24 hr. clock) 1600 6. Served To MAIL OUT

7. Operator GRUNDY MINING, CO, INC Mine No 21 MINE 8. Mine ID 40-00524- (Contractor)

Justification For Action

BASED ON EVIDENCE PRESENTED BY REPRESENTATIVES OF MANAGEMENT DURING A HEALTH AND SAFETY CONFERENCE, ORDER OF WITHDRAWAL NO. 0757825 IS MODIFIED TO CHANGE THE DEGREE OF NEGLIGENCE FROM "HIGH" TO "NONE". THE ORDER SHALL ALSO BE CHANGED TO A CITATION WITH THE TYPE OF ACTION CHANGED FROM 104-D-1 to 104-A.

9. Extended To ☐ 9a Date Mo. Da. Yr. 9b. Time (24 hr. clock) 10. Vacated ☐ Terminated ☐ Modified ☒

11. See Continuation Form ☐ 12. Type of Inspection DGC 13. Event Number

14. Signature Joseph W. Pavlovich AR Number 21834

MSHA Form 7000-3a., Apr 82 (revised)

27-5

Mine Citation/Order Continuation P/17 L 25 TD OCT 0 6 1982

U.S. Department of Labor
Mine Safety and Health Administration

1. Dated (original issue) 12 15 81 (Mo Da Yr) 2. Citation/Order Number 0757825-06

3. Subsequent Action ☒ Continuation ☐ 4. Date 09 22 82 (Mo Da Yr) 5. Time (24 hr clock) 0840 6. Served To MAIL OUT

7. Operator GRUNDY MINING CO. INC. Mine NO 21 8. Mine ID 40-00524- (Contractor)

Justification For Action

MODIFICATION NUMBER 0757823-04 ISSUED ON 08-26-82 IS HEREBY MODIFIED TO SHOW THE CITATION/ORDER NUMBER (BLOCK NO. 2) AS 0757825-4 INSTEAD OF 0757823-04.

9. Extended To ☐ 9a. Date (Mo Da Yr) 9b. Time (24 hr clock) 10. Vacated ☐ Terminated ☐ Modified ☒

11. See Continuation Form ☐ 12. Type of Inspection DGC 13. Event Number

14. Signature Joseph W. Pavlovich AR Number 21834

MSHA Form 7000-3a, Apr 82 (revised)

Exhibit 26

U.S. DEPARTMENT OF LABOR—MINE SAFETY AND HEALTH ADMINISTRATION
MSHA FORM 7000-3 (Jun 78)

☐ CITATION (SEE REVERSE) ☒ ORDER OF WITHDRAWAL (SEE REVERSE) DATE 12/15/81 (MO DA YR) TIME 1500 (24 HR CLOCK) 0757824

SERVED TO MR HOLLIS RAGERS - SAFETY DIRECTOR OPERATOR GRUNDY MINING COMPANY, INC.

MINE NO. 21 MINE MINE I.D. 40-00524-___ (CONTRACTOR)

TYPE OF ACTION 104-D-L, ___-_-_ VIOLATION OF SECTION ___-_-_ OF THE ACT OR

PART AND SECTION 75 0329-_____ OF TITLE 30 CODE OF FEDERAL REGULATIONS: OFFICE USE ONLY DATE MAR 1 2 1982

TYPE OF INSPECTION AEA ☒ S AND S (SEE REVERSE) ☐ WN CODES _/_ _P 10 13 ATD _/_/_

CONDITION OR PRACTICE THE BLEEDER SYSTEM FOR THE ABANDONED AREA OF THE 5 RIGHT SECTION WAS NOT FUNCTIONING. BECAUSE AN EXPLOSIVE METHANE-AIR MIXTURE THAT HAD ACCUMULATED IN THE GOB AREA MIGRATED INTO THE ACTIVE WORKINGS OF THE 003 SECTION WHEN THE AREA WAS INTERSECTED.

AREA OR EQUIPMENT THE 003 WORKING SECTION

INITIAL ACTION ☐ NOTICE ☒ CITATION ☐ ORDER NO. 0757821 DATED 12/15/81 (MO DA YR)

TERMINATION DUE DATE 01/07/82 (MO DA YR) TIME 0700 (24 HR CLOCK) SIGNATURE ▶ Joseph W. Pavlovich 1834 (AR)

ACTION TO TERMINATE

DATE __/__/__ (MO DA YR) TIME ____ (24 HR CLOCK) SIGNATURE ▶ ___ (AR) ☐ SEE CONTINUATION FORM

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U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
MSHA FORM 7000-3a (Jun 78)

(original issue) DATED 12/15/81 (MO DA YR) No 0757824-1

☒ SUBSEQUENT ACTION ☐ CONTINUATION ☐ CITATION ☒ ORDER DATE 01/07/82 (MO DA YR) TIME 0700 (24 HR CLOCK)

SERVED TO MR HOLLIS ROGERS - SAFETY DIRECTOR OPERATOR GRUNDY MINING COMPANY, INC.

MINE No. 21 MINE I.D. 40-00524-___ (CONTRACTOR

JUSTIFICATION FOR ACTION CHECKED BELOW THE BLEEDER SYSTEM THROUGH THE ABANDONED 5 RIGHT SECTION WAS OPENED TO PROVIDE ADEQUATE AIR FLOW TO VENTILATE THE GOB AREA.

☐ EXTENDED TO: DATE __/__/__ (MO DA YR) TIME ____ (24 HR CLOCK) ☐ VACATED OFFICE USE ONLY CODES _/_ _P 10 14 ATD MAR 1 2 1982 DATE

☒ TERMINATED ☐ MODIFIED ☐ SEE CONTINUATION FORM

TYPE OF INSPECTION AEA

SIGNATURE ▶ Joseph W. Pavlovich 1834 (AR)

[redacted]

Inspector's Statement

U.S. Department of Labor
Mine Safety and Health Administration

Mine ID 40-00524- (contractor)

Day (mo/da/yr) 12 15 81

Number 0757824

Violation of Part and Section 75.0329- of Title 30 Code of Federal Regulations

Section of the Act

▶ Negligence (elaborate in remarks)

1 The condition or practice cited

☐ a could not have been known or predicted, or occurred due to circumstances beyond the operator's control. Explain in remarks

☐ b had been recorded prior to shift during which it was cited and should have been corrected. If so, state time and date recorded in remarks

☐ c should have been known to operator. In remarks, show facts on which you base this conclusion

☒ d was known by operator and should have been corrected. In remarks, show facts on which you base this conclusion

☐ e this type violation occurs frequently at this mine. Explain in remarks

☐ f section foreman and/or any other supervisory personnel made statements indicating that he/they caused, observed, or knew about violation. If so, identify person and state what was said in remarks

☐ g other miners made statements regarding the violation. If so, identify miners and what was said in remarks

Remarks (identify by item) (reverse may be used)

Test boreholes were drilled into the gob area and effluent flowed from this abandoned area into the active workings of the 003 section. The section foreman made examination in the 003 section face areas and detected methane, during the shift on which the explosion occurred. If the bleeder had been effective, effluent would have been directed away from the test boreholes and would not have entered the active 003 section

▶ Gravity

1 The occurrence of the event against which the cited standard is directed was

☐ Improbable ☐ Imminent
☐ Probable ☒ Occurred

List facts on which you base your conclusion

Upon breaking into gob, methane present in g
migrated back over the working section rathe
than exhausting through the gob area as requ

2 What other events would have to occur before an accident would have resulted from the violation?

3 The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be

☐ No lost days (degree 6) ☐ Lost work days or restricted duty (degree 3-5)
☒ Fatal (degree 1) ☐ Permanently disabling (degree 2)

Explain 13 persons died as a result of the explosion caused by this $CH_4$ migration.

4 Number of persons who would be affected if the event occurred or were to occur

5 Area of the mine that would have been affected were the event to occur

☐ Working face ☐ Entire Mine
☐ Working section ☐ Other (specify)

6 Conditions or circumstances which might have increased the likelihood or severity of the event

▶ Good Faith

1 The condition was corrected

☐ within the time specified for abatement (indicate in remarks)

☒ after a withdrawal order was issued

Remarks

2 Management took extraordinary steps to gain compliance by

Inspector's Signature

Joseph W. Pavlovich

AR 1834

MSHA Form 7000-4 Oct 78

Continuation

U.S. Department of Labor
Mine Safety and Health Administration

1. Dated (original issue) 12 15 81 (Mo Da Yr)
2. Citation/Order Number 0757824-
3. Subsequent Action ☑ Continuation ☐
4. Date 07 20 82 (Mo Da Yr)
5. Time (24 hr. clock) 1420
6. Served To Mail Out
7. Operator Grundy Mining Co., Inc. Mine No. 21
8. Mine ID 40-00524- (Contractor)

Justification For Action

Order No. 0757824 is modified to include the inspector's evaluation according to the new 30 CFR Part 100, Civil Penalty Criteria:

1. Negligence-(High); 2. Gravity - A. Occurence (Occured) B. Injury or Illness (Fatal) C. Number of persons effected (Thirteen)

9. Extended To ☐ 9a. Date Mo Da Yr 9b. Time (24 hr. clock)
10. Vacated ☐ Terminated ☐ Modified ☑
11. See Continuation Form ☐
12. Type of Inspection DGC
13. Event Number
14. Signature Raymond H. Vaughn
AR Number 21833

MSHA Form 7000-3a, Apr 82 (revised)

26-2

Exhibit 05-2

# REVIEW OF CITATIONS AND ORDERS OF WITHDRAWAL
# BY ISSUING INSPECTOR AND SUPERVISOR

MSHA Office JASPER TENNESSEE

Mine I.D. 40-00524

Company Name GRUNDY MINING COMPANY, INC

Location WHITWELL MARION TENNESSEE
Town County State

Citation/Order No. 0757524 Date 12-15-81

Do you recommend a special investigation under Section 110 of the Act?
X yes ____ no

If yes, why? THIS CONDITION CONTRIBUTED TO A MINE EXPLOSION RESULTING IN FATAL INJURIES TO 13 EMPLOYEES.

Issuing Inspector Joseph W Partezuch

Supervisor John E. Weekly

Date Reviewed 2-25-82

Mine Citation/Order Continuation FD p 16 L 17

U.S. Department of Labor
Mine Safety and Health Administration

1. Dated (original issue) 12 15 81 (Mo Da Yr)
2. Citation/Order Number 0757825-03
3. Subsequent Action ☒ Continuation ☐
4. Date 08 26 82 (Mo Da Yr)
5. Time (24 hr. clock) 1530
6. Served To MAIL OUT
7. Operator GRUNDY MINING CO. INC. Mine NO. 21 MINE.
8. Mine ID 40-00524- (Contractor)

Justification For Action

BASED ON EVIDENCE PRESENTED BY REPRESENTATIVES OF MANAGEMENT DURING A HEALTH AND SAFETY CONFERENCE, ORDER OF WITHDRAWAL NO. 0757824 IS MODIFIED TO CHANGE THE DEGREE OF NEGLIGENCE FROM "HIGH" to "NONE." THE ORDER SHALL ALSO BE CHANGED TO A CITATION WITH THE TYPE OF ACTION CHANGED FROM 104-d-1 to 104-A.

MSHA
MAR 30 1983
RECEIVED
Barbourville, Ky.
District 7 Office

9. Extended To ☐ 9a. Date Mo Da Yr 9b. Time (24 hr. clock)
10. Vacated ☐ Terminated ☐ Modified ☒
11. See Continuation Form ☐
12. Type of Inspection DGC
13. Event Number
14. Signature Joseph W. Pavlovich
AR Number 21834

MSHA Form 7000-3a., Apr 82 (revised)

The CHAIRMAN. Was Mr. Zegeer a consultant for the company at that time?

Mr. SPICER. He was, but I had nothing to do with Mr. Zegeer at that time.

The CHAIRMAN. Did he bring you up here?

Mr. SPICER. No, sir. Joe Lamonica asked me to come up to the headquarters office. I understand that Mr. Zegeer was upset not that I was coming, but upset that Mr. Lamonica did not consult with him before he brought me.

The CHAIRMAN. Well, three days after Mr. Layne wrote that memorandum, a miner was killed.

Mr. SPICER. I have that memorandum in front of me.

The CHAIRMAN. Well, let me go back. In a memorandum to Kenneth Dixon, Mr. Layne complained about an illegal mine in Jasper, Tennessee and said that he had been advised by a district official the mine had not been inspected because you had issued an order to stay away from that mine.

Would you take a look at that? Do you remember that, or do you want to take a look at the document?

Mr. SPICER. No. I have it in front of me, and I refreshed my memory. The memorandum involves some details, but the statement that you are interested in says, "Max Condra stated that this mine has not been inspected because Jerry Spicer issued instructions to stay away from this operation." We had—on two different occasions in collaboration with our Solicitor's Department in Arlington and Nashville had these operators before a Federal district court judge, trying to get jurisdiction. And he said that this mine was not subject to the Act, so we were under court order to not go to that mine.

[Information supplied for the record follows:]

**U. S. Department of Labor**

Mine Safety and Health Administration
PO Box 572
Barbourville, Kentucky 40906

11
October 12, 1983

MEMORANDUM FOR: KENNETH DIXON

FROM: Lawrence L. Layne LLL

SUBJECT: Investigation of Discrimination Complaint, Case No. BARB-CD-83-33, Verlon David Perry vs. M. and W. Coal Company

M. and W. Coal Company is an illegal underground mine located near Jasper, Tennessee, which has operated for several years. About 20 miners work underground, one shift a day. The surface fan is not operated when miners are inside the mine. Blasting with fuses is done at the end of each shift and if smoke is in the faces the next morning, window fans are used for face ventilation.

The coal is hauled to Tennessee Consolidated Coal Company's Preparation Plant, to a Cement Plant on Suck Creek in Chattanooga, Tennessee, and to two other small tipples.

Max Condra stated that this mine has not been inspected because Jerry Spicer issued instructions to stay away from this operation.

To ascertain the disposition of Case No. BARB-CD-83-33 a determination of MSHA's jurisdiction must be made at this mine.

Oct 11, 1983

Memo For : Ken Dixon &D
From : L. G. Fayne
Subject : Investigation of Discrimination
Complaint Case No. Barb CD-83-3.
Vernon David Perry v.
M. and W. Coal Company

M. and W. Coal Company is an illegal underground mine located near Jasper, Tenn., which has operated for several years. About 20 miners work underground one shift a day. The surface fan is not operated when miners are inside the mine. Blasting with fuses is done at the end of each shift and if smoke is in the faces the next morning, window fans are used for face ventilation.

The coal is hauled to Tenn. Consolidated Coal Company's Preparations Plant, to a Cement Plant on Suck Creek in Chattanooga, Tenn, and to two other small tipples.

Tiller Condra stated that this mine has not been inspected because Jerry Spicer issued instructions to stay away from this operation.

To ~~determine~~ [illegible] the disposition of Case No. Bark CD-83-33 a determination of MSHA's jurisdiction must be made at this mine.

The **Chairman**. Will you let us have that material, or can you get that material?

Mr. **Spicer**. Yes, sir.

The **Chairman**. You were under court order not to go to that mine?

Mr. **Spicer**. Yes, sir. We had tried to get——

The **Chairman**. On what basis?

Mr. **Spicer**. I believe, Senator, that we were unable to prove that it was in interstate commerce.

The **Chairman**. Do you mean, to inspect it? You are saying that there was some court order that found that a coal mine was outside the interstate commerce——

Mr. **Clair**. Senator, excuse me. Perhaps I can shed some light on this. This is an illegal coal mine in a small, remote location. In 1977, after an MSHA attempt to inspect this mine, an investigation was conducted, and the Solicitor's Office attorney presented a case for an injunction in Federal district court to permit MSHA to inspect this mine.

The Federal district court judge refused to grant the injunction, basically claiming that the agency had not shown that the mine was in interstate commerce, and that we had not shown that the person we were proceeding against was the operator of the mine.

There was a second attempt a few years later after another MSHA investigation, to present this case again to the court. Again the court said that we had not proven our case that the mine was in interstate commerce, and he denied the injunction again.

That remained the situation until a miner came to MSHA from this operation with a discrimination complaint. At this point, we had a person who had information about the mine, and that individual told us who the operator was, where the coal was sold, and on the basis of that information we then went back into court and, faced with a successful injunction action, the operator permitted investigation of that mine.

The memo in question here, or the reference in the memo to Mr. Spicer telling the inspector not to inspect this mine is, I think, consistent with the two decisions from the district court.

The **Chairman**. When did you get the ruling on the third case?

Mr. **Clair**. It came in the context after a discrimination case which I believe came in to MSHA in 1983. As that case—I believe had been filed, but I would like to present information for the record on that.

Mr. **Spicer**. I might, I think, address your concern there, Senator. Three days after this memorandum was written, a man was killed in this mine. We were in due process of trying to again establish jurisdiction. After the man was killed in October of 1983, it was some time in December that the judge ruled that we did have jurisdiction.

The **Chairman**. Well, can I ask, did you appeal the case in the first or second instance?

Mr. **Clair**. No, those cases were not appealed.

The **Chairman**. Why not?

Mr. **Clair**. I would have to go back and see as to the status of the case at that time. It is extremely difficult to get information about illegal mines. They present an enormous problem for the agency in finding reliable information from uncooperative operators.

The CHAIRMAN. How many mines are outside the inspection authority of this Act?

Mr. CLAIR. In our opinion, very, very few.

The CHAIRMAN. Well, I do not see how there are any. I mean, I do not——

Mr. CLAIR. We have won cases, Senator, against mine operators who have very small operations. I just cannot say why this particular case was not pursued, but I would say, Senator, that we did pursue it three times before the judge.

The CHAIRMAN. Well, I would like to know who made the decision not to pursue it, not to appeal. I mean from my own law school days, I remember the Shecter case about chickens, and if you had a chicken farm, you were in interstate commerce. It just defies any kind of logic or understanding not to believe that those mines are involved in interstate commerce, and if you got a bad decision from some judge, why did you not go ahead and appeal it—and if you did not go ahead and appeal it, who made the decision not to go ahead and appeal it.

Mr. CLAIR. Well, I would be happy to provide that for the record to the extent we can, Senator.

[Information supplied for the record follows:]

Thursday, December 1, 1983

# Inspectors say they were barred from mine site

By Eric Kaufman
Times staff writer

Federal mine inspectors say they have been prohibited from inspecting a mine near Whitwell, Tenn., where a 19-year-old Dunlap, Tenn., man was killed Oct. 14.

According to documents filed in U.S. District Court in Chattanooga Wednesday, inspectors of the Labor Department's Mine Safety and Health Administration (MSHA) have been barred from inspecting the No. 1 Mine by the superintendent of M&W Coal Co. Inc.

U.S. District Judge H. Ted Milburn has scheduled a hearing for this morning, requested by the Labor Department, seeking a temporary restraining order against the coal company. The Labor Department, claiming jurisdiction because the firm is involved in interstate commerce, says it needs the order to allow inspectors into the mine.

In October, authorities said Lake James McCarver of Dunlap died in the mine during an accident. Geary Dillon, attorney for M&W, said Wednesday evening in a telephone conversation that McCarver died from a concussion.

McCarver, a motorman, died after his cap was caught in a mine car motor, Dillon said.

"His cap was tied on his belt, which got caught under the motor and his head hit something," Dillon said. "The (medical) report showed it was a concussion."

Dillon said Dr. Frances Barnette of Whitwell Community Hospital made the report. She could not be reached for comment Wednesday night.

A four-page complaint filed by the Labor Department said that on Oct. 19, 1983, MSHA representatives could not investigate the accident because they were denied access to the Marion County mine by William H. Crabtree, the mine superintendent.

In an affidavit filed with the complaint, Max Condra, a MSHA inspector stationed in Jasper, Tenn., said Crabtree stopped him and other agents from going into the mine on Oct. 19 and Nov. 30. In another affidavit, Edward Morgan, a MSHA agent stationed in Barbourville, Ky., said he was prevented from going into the mine when he and Condra visited the site Nov. 30.

Condra and Morgan could not be reached for comment Wedeasday night.

Dillon said the complaint is part of a long-running legal battle between the coal compnay and the government, which he said has been trying to close the mine since 1978. Dillon said even if inspectors were allowed into the mine, they would not be able to reach the accident site because it has been mined and the pillars have been pulled.

"They can't inspect the place where he was killed ... they can't get to it," Dillon said.

The coal company, headquartered in Palmer, Tenn., has been operating the mine, in Whitwell Mountain, since 1975, Dillon said.

B2 THE CHATTANOOGA TIMES, FRIDAY, DECEMBER 2, 1983

# Judge Milburn postpones ruling on Whitwell mine inspection

By Eric Kaufman
Times staff writer

U.S. District Judge H. Ted Milburn Thursday ordered attorneys to resolve by 8 a.m. Monday whether federal mine inspectors have the authority to inspect a mine near Whitwell, Tenn., where a man was killed Oct. 14.

"If there is jurisdiction, I'm going to expect it to be resolved by Monday morning," Milburn said during a hearing in Chattanooga.

M&W Coal Co. of Palmer, Tenn., received a complaint this week from the Labor Department's Mine and Safety and Health Admnistration (MSHA), which wants a temporary restraining order to allow inspectors into the No. 1 on Whitwell Mountain. Filed Wednesday, the complaint said three inspectors were denied access to the mine by M&W superintendent William Crabtree Oct. 19 and Nov. 30.

Affidavits attached to the complaint said Crabtree manitained that a federal judge had ruled that MSHA had no jurisdiction to go into the mine to investigate the accident in which 19-year-old Luke James McCarver of Dunlap was killed.

But MSHA said there was no such ruling and MSHA has jurisdiction because M&W is involved in interstate commerce because M&W does business with Tennessee Consolidated Coal Co., which ships coal out of state. MSHA also said M&W gets explosives shipped from Ohio.

Milburn declined to issue the 10-day restraining order, but told attorneys that if the matter isn't resolved by Monday, he would hear arguments on why a preliminary injunction should not be issued against the coal company.

Attorney Ray Mosley of Chattanooga, representing M&W in the absence of Whitwell attorney Geary Dillon, said he needed more time to resolve the jurisdiction question. Thursday night Mosley said no progress had been made.

"Extraordinary releief is needed to protect the health and safety of the miners," Labor Department attorney W.F. Taylor of Nashville told Milburn.

Dillon has said McCarver died after his mining cap was caught in a mine train. McCarver was a motorman, he said. Attorneys have said McCarver's death certificate stated he died from a concussion.

Dillon said even if miners got into the mine, they couldn't inspect the accident site because the pillars have been pulled, blocking passage.

But Edward Morgan, mine inspector from Barbourville, Ky., said inspectors must go into the mine to verify what happened.

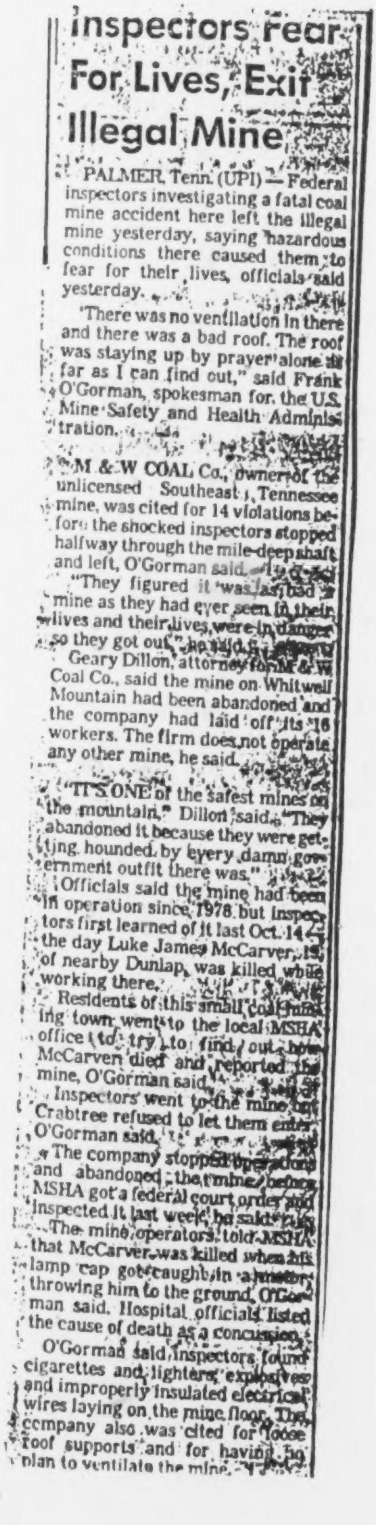
"That's the only way to do it — just go see," Morgan told a reporter.

THE CHATTANOOGA TIMES, TUESDAY, DECEMBER 6, 1983 B3

# Milburn allows mine inspection

**Times staff report**

U.S. District Judge H. Ted Milburn Monday permanently enjoined a Palmer, Tenn., mining company and its superintendent from barring federal mine inspectors from investigating a Whitwell, Tenn., mountain mine where a 19-year-old Dunlap, Tenn., man was killed Oct. 14. Last week M&W Coal Co. Inc. and its superintendent received a complaint from the U.S. Department of Labor's Mine and Safety and Health Administration, saying three MSHA inspectors were kept from entering the No. 1 mine Oct. 19 and Nov. 30. Luke James McCarver died there Oct. 14, authorities said. Mine officials reportedly claimed MSHA had no jurisdiction to inspect the mine, but MSHA said it did because the firm is engaged in interstate commerce, a factor that would make the issue a federal one. Geary Dillon of Whitwell, M&W's attorney, said McCarver, a motorman for a mine train, was killed when a belt holding his mining cap caught in the train's motor, pulling McCarver to the floor, resulting in a concussion. Dillon said Monday miners were discussing inspection of the mine with an MSHA inspector. Dillon also said M&W has ceased operations at the mine.



# Inspectors Fear For Lives, Exit Illegal Mine

PALMER, Tenn. (UPI) — Federal inspectors investigating a fatal coal mine accident here left the illegal mine yesterday, saying hazardous conditions there caused them to fear for their lives, officials said yesterday.

"There was no ventilation in there and there was a bad roof. The roof was staying up by prayer alone as far as I can find out," said Frank O'Gorman, spokesman for the U.S. Mine Safety and Health Administration.

M & W COAL Co., owner of the unlicensed Southeast Tennessee mine, was cited for 14 violations before the shocked inspectors stopped halfway through the mile-deep shaft and left, O'Gorman said.

"They figured it was as bad a mine as they had ever seen in their lives and their lives were in danger so they got out," he said.

Geary Dillon, attorney for M & W Coal Co., said the mine on Whitwell Mountain had been abandoned and the company had laid off its 16 workers. The firm does not operate any other mine, he said.

"IT'S ONE of the safest mines on the mountain," Dillon said. "They abandoned it because they were getting hounded by every damn government outfit there was."

Officials said the mine had been in operation since 1978 but inspectors first learned of it last Oct. 14 — the day Luke James McCarver, 19, of nearby Dunlap, was killed while working there.

Residents of this small coal mining town went to the local MSHA office to try to find out how McCarven died and reported the mine, O'Gorman said.

Inspectors went to the mine but Crabtree refused to let them enter, O'Gorman said.

The company stopped operations and abandoned the mine before MSHA got a federal court order and inspected it last week, he said.

The mine operators told MSHA that McCarver was killed when his lamp cap got caught in a motor, throwing him to the ground, O'Gorman said. Hospital officials listed the cause of death as a concussion.

O'Gorman said inspectors found cigarettes and lighters, explosives and improperly insulated electrical wires laying on the mine floor. The company also was cited for loose roof supports and for having no plan to ventilate the mine.

The CHAIRMAN. And I would also like to find out what mines in this country you are not inspecting now because the legal department believes they are outside the jurisdiction of the interstate commerce. I would love to see that memorandum.

Mr. CLAIR. There is no such memorandum, Senator. I can tell you that our position is that any mining operation in this country is subject to the Mine Act, unless—it is nearly inconceivable to imagine the "mom and pop" kind of operation that would provide house coal for themselves. Any operation of any size, using equipment bought in interstate commerce, et cetera, that kind of operation is in our view under the Mine Act.

I would only say that in this case, we did pursue them over a period of years until ultimately, we were successful.

The CHAIRMAN. Well, just looking at Mr. Layne's memo, you have got 20 miners in the Jasper mine. That does not sound like a "mom and pop" operation to me.

Mr. CLAIR. And we did not consider it to be outside the scope of the Mine Act.

The CHAIRMAN. Well, we will wait to find out what the timing was in terms of that third case against the mine. We note that this memorandum is dated October 11th, that says that "Max Condra stated that this mine has not been inspected because Jerry Spicer issued instructions to stay away from the operation." I would like to see what the dates of those proceedings were.

Mr. SPICER. Senator, I would like to add one more thing to this memorandum, and I would like to submit it to the record. Several pretty bad things were said about me here yesterday, and some of them—well, most of them—were not true. And where they were true, it was not an attempt to get some personal gain or anything.

But when my supervisory engineer received this, he came over and said, "Did you say this?" I guess he was shocked, too, or maybe he did not know about it. I do not remember the circumstances. But I put on his copy, which is the official file copy in Barbourville, "Ken"—that is Ken Dixon—"we are trying to determine ownership, i.e., prove jurisdiction. Have case ready to send to Arlington when we hear from Taylor." Bill Taylor was a solicitor in Nashville.

And I would just like to state that I did not try to suppress special investigations in that district.

The CHAIRMAN. All right. Would you give us a copy?

Mr. SPICER. Yes, sir.

The CHAIRMAN. And I want you to know, Mr. Spicer, you are more than welcome as we go through this material to make whatever rebuttal you feel is necessary or to submit any additional material to the record. We will make that a part of the record. You are entitled to that.

Mr. SPICER. I appreciate that.

The CHAIRMAN. We want to make that clear.

Now, Mr. Layne testified that the conclusions in his investigation report on the Consolidated Coal Company Matthews Mine was changed. This is obviously a different case.

Now, it says in his report, "If the methane monitors were kept operative and the miner operators were provided with methane detectors and methane tests were made at 20-minute intervals or more often, this ignition may have been prevented."

Now, that is in his report about the Matthews Mine. Now, in your final report, "properly maintained methane monitor to be operative at all times." What you left out is a key element, and that is that they did not have the methane monitors—and if they had, it would not have happened.

How do you draw that conclusion from the other report? It changes the whole thrust of the report.

Mr. SPICER. I am not familiar with this. I would be happy to submit anything to the record. But if this is something that I was supposed to have done as the district manager, I was not there then.

The CHAIRMAN. Well, it is Layne's report, and the key part of that, I have just read. And then you filed a final report based upon the Layne report, but someone changed Layne's report. That is the point. You had Layne's report, but it was altered and it was changed. It is suggested that you were the one that made the change.

Mr. SPICER. I did not, sir.

The CHAIRMAN. Well, do you know who did?

Mr. SPICER. I would be happy to look into it and find out.

The CHAIRMAN. Well, you must have known something about it. That was an investigation of fatalities.

Mr. SPICER. No, sir, it was a non-injury. What I have before me is a non-injury gas ignition.

The CHAIRMAN. They had a fire in the mine, I guess.

Mr. SPICER. Yes, sir, a non-injury. And these are not all reviewed by Arlington—and never were. They are submitted to Arlington, I believe.

But I will be happy to find out and address whatever Mr. Layne's concerns were.

[Information supplied for the record follows:]

UNITED STATES
DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION

District 7

# REPORT OF INVESTIGATION
# (UNDERGROUND COAL MINE)

## NONINJURY METHANE GAS IGNITION

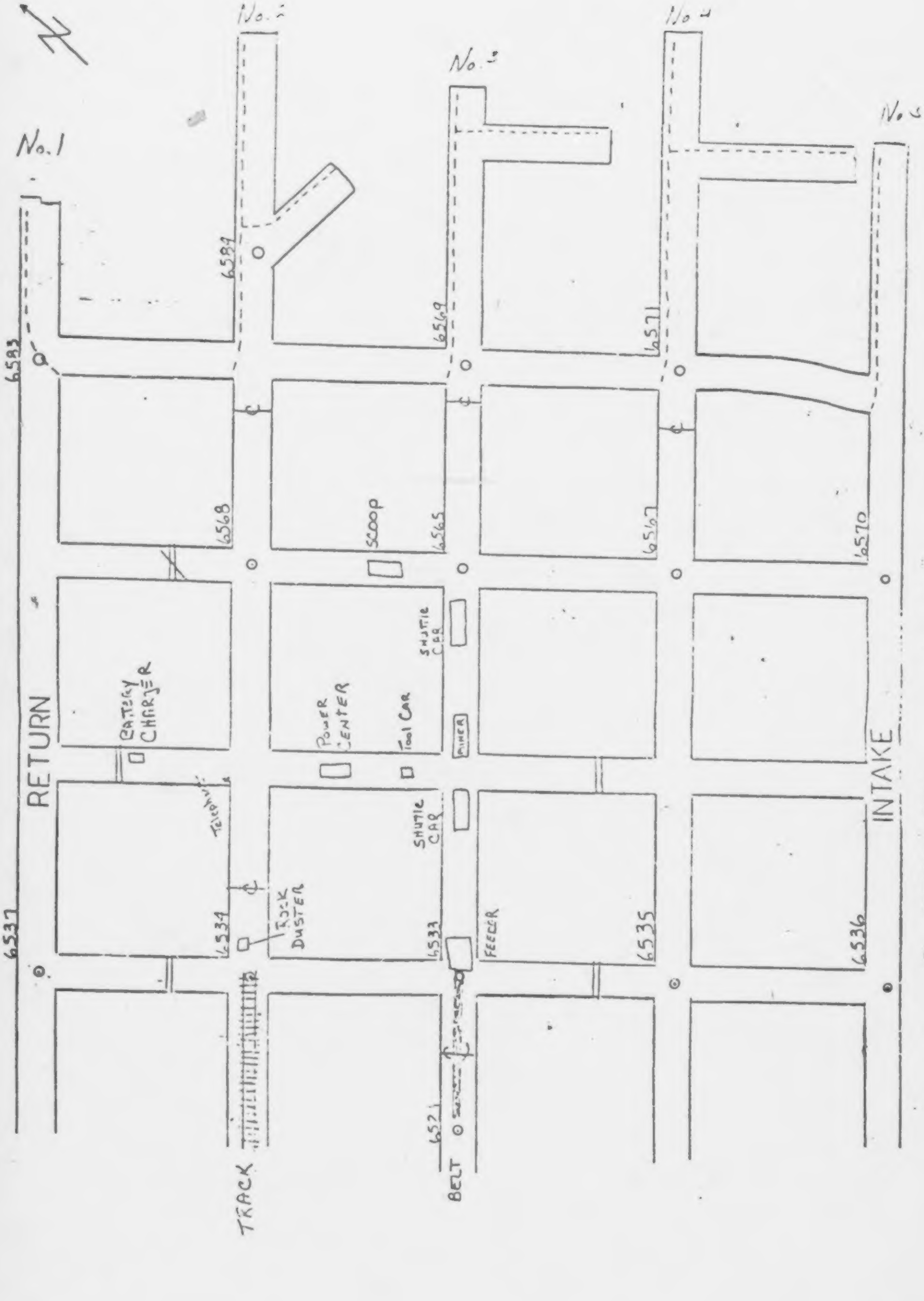
Matthews Mine (ID No. 40-00520)
Consolidation Coal Company
Middlesboro, Bell County, Kentucky

February 24, 1984

by

Lawrence L. Layne
Mine Safety and Health Specialist
Special Investigator

Originating Office - Mine Safety and Health Administration
P. O. Box 572, Barbourville, Kentucky 40906
Kenneth Dixon, Acting District Manager


N
No.1
No.2
No.3
No.4
No.5
6583
6589
6569
6571
6568
6565
6567
6570
SCOOP
SHUTTLE CAR
BATTERY CHARGER
POWER CENTER
TOOL CAR
MINER
RETURN
Telephone
SHUTTLE CAR
6537
6534
ROCK DUSTER
6533
FEEDER
6535
6536
INTAKE
6521
TRACK
BELT

9 SECTION 1"=50'
2-27-83
DRAWN BY: RON KECK

Abstract of Investigation

**U.S. Department of Labor**
Mine Safety and Health Administration

***Authority*** – This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164

**Section A – Identification Data**

1. Title of investigation: Noninjury Methane Gas Ignition
2. Date MSHA investigation started: February 24, 1984
3. Report release date: July 20, 1984
4. Mine: Matthews Mine
5. Mine ID number: 40-00520
6. Company: Consolidation Coal Company
7. Town, County, State: Middlesboro, Bell County, Kentucky
8. Author(s): Lawrence L. Layne

**Section B – Mine Information**

9. Daily production: 4,000
10. Surface employment: 30
11. Underground employment: 370
12. Name of coalbed: Jellico
13. Thickness of coalbed: 46" to 6'

**Section C – Last Quarter Injury Frequency Rate (HSAC) for:**

14. Industry: 5.59
15. This operation: 2.08
16. Training program approved: Yes
17. Mine Profile Rating: Not currently rated

**Section D – Originating Office**

18. Mine Safety and Health Administration Coal Mine Health and Safety District No. 7
Address: P.O. Box 572, Barbourville, Kentucky 40

**Section E – Abstract**

On Friday, February 24, 1984, about 1:25 a.m., a methane gas ignition occurred at the face of No. 1 entry, 009 section, Matthews Mine, Consolidation Coal Company. There were no injuries or property damage. The ignition occurred when sparks or heat from the bits of the continuous mining machine ignited a flammable methane-air mixture. The flame stayed near the roof, extended outby the face about 30 feet, was self-extinguished, and of short duration.

**Section F – Mine Organization**

| Company officials: | Name | Address |
|---|---|---|
| 19. President: P. Mining | Ronald E. Smith | |
| 20. Superintendent | Jack Foster | P.O. Box 460, Middlesboro, KY 40965 |
| 21. Safety Director: | Marshall R. Fugate | do |
| 22. Principle officer–H&S | Jack Foster | do |
| 23. Labor Organization: | UMWA, District 19 | Middlesboro, Kentucky 40965 |
| 24. Chairman–H&S Committee: | George Lowe | |

2-24-84

Memo For : Ken Dixon

From : L J Jayne

Subject : Investigation of a Methane Ignition at Matthews mine (ID No. 40-00520) Consolidation Coal Co., Middlesboro, Bell Kentucky

While conducting the above investigation, it was discovered that machine operators of electric face equipment do not have nor have they every had methane detector to check for methane at 20 minute intervals, pursuant to 30 CFR 75.307

## Conclusion

An ignition occurred about 1:25 am 2-24-84 at the face of No. 1 entry, 009 section. About 55 minutes elapsed from the last methane test at 12:30 am until the ignition at 1:25 am. If the methane monitor were kept operative and the continuous miner operators were provided with methane detectors and methane test were made at 20 minute intervals or more often this ignition may have been prevented.

The "conclusion" was changed by Ken Dixon to eliminate the fact that machine operators have never had methane detectors

## Conclusion

A frictional ignition of methane gas occurred about 1:25 a.m., February 24, 1984, at the face of No. 1 entry, 009 section when methane gas was ignited by arcs and/or sparks generated by the continuous mining machine. Contributing to the likelihood of the occurrence was management's failure to:

1. Properly maintain the methane monitor to be operative at all times.

2. Make adequate tests for methane at 20 minute intervals or more often.

Respectfully submitted:

R L Layne
Lawrence L. Layne
Special Investigator

Approved by:

Kenneth T. Howard
Kenneth T. Howard
Subdistrict Manager

and

Kenneth Dixon
Kenneth Dixon
Acting District Manager

## APPENDIX

List of persons furnishing information and/or present during the investigation:

### Consolidation Coal Company Officials

| | |
|---|---|
| Jack Foster | Superintendent |
| Gary Helton | General Mine Foreman |
| Dexter Lester | Section Foreman |
| John Jones | Maintenance Foreman |
| Don Slovin | Shift Foreman |
| O. B. Bray | Safety Department |
| M. R. Fugate | Safety Department |
| Jack Holt | Safety Department |
| John T. Hock | Personnel Manager |

### Consolidation Coal Company Employees

| | |
|---|---|
| George Lowe | Safety Committee |
| Morgan Bayless | Safety Committee |
| Condy Daugherty | Safety Committee |
| Vess Hall | Safety Committee |
| Jerry Wright | Safety Committee |
| Tim Maiden | Continuous Miner Operator |
| Paul Phipps | Continuous Miner Operator Helper |
| Randall Lowe | Shuttle Car Operator |

### Representative of Miners

| | |
|---|---|
| Hugh Jones | UMWA Safety Coordinator |

### Mine Safety and Health Administration

| | |
|---|---|
| William Payne | Coal Mine Safety and Health Inspector |
| Oscar Watkins | Coal Mine Safety and Health Inspector (Electrical) |
| Lawrence L. Layne | Special Investigator |

The CHAIRMAN. Mr. Scaff testified yesterday that he was harassed in front of your office by a large coal company after closing down their haulage system. Is that correct?

Mr. SPICER. I had a meeting with Mr. Scaff and the operators in the Barbourville office. Whether it was after he closed down the haulage system, I would have to go back and see if I could find out in the records.

During the meeting, I was attempting to create some communication between Mr. Scaff and the company. The company was a tough company to deal with. They were complainers. And I had done this once before with another inspector, quite successfully. This meeting was not a success, and I regret ever having it. But again, my intentions were not to harass Mr. Scaff.

The CHAIRMAN. Well, in creating communication, if someone has been violating the law, it would seem to me that you would be defending his actions at the meeting.

Mr. SPICER. When the company violated the laws, I did defend the inspector.

The CHAIRMAN. Well, do you remember whether you did defend his actions at the meeting?

Mr. SPICER. Not well, Senator.

The CHAIRMAN. Well, did you vacate the ordered issued by Mr. Scaff at that mine?

Mr. SPICER. I do not remember. I would have to go back and see.

The CHAIRMAN. Well, he testified that you did.

Mr. SPICER. Well, then, if I vacated it, I question whether it was a legal order. I vacated more than one, Senator. I had lots of health and safety———

The CHAIRMAN. Well, that is part of the problem, as we are finding out.

Mr. SPICER. Well, but that is also part of the responsibility of a manager.

The CHAIRMAN. Yes, but if you find out that in a situation just after this, a man was killed shortly thereafter, on the very haulage system that Mr. Scaff had previously closed down.

Mr. SPICER. I do not know if that is true or not. It may be. I do not know.

The CHAIRMAN. Well, what would you think about that, if that is true? We had testimony on that and documentation on that. Here, you have an investigator who points this out, goes into the meeting with the coal company. You are talking about creating communication with the coal company. He says you do not back him up; you vacate the order, and somebody loses his life.

Now, this is not just isolated. We are going on through this record, and we are getting case after case after case.

Mr. SPICER. Senator, if a citation was related to a fatality, and I turned it over, and it was a valid citation, that is certainly wrong. I am not sure that that was established, and I need to do some research.

The CHAIRMAN. We will get to that.

Mr. SPICER. Okay.

The CHAIRMAN. Did the National Mining Company operate in your district?

Mr. SPICER. Yes, sir, National Mines.

The CHAIRMAN. Mr. Scaff testified that he completed an inspection of one of its mines and issued 39 citations for safety violations, but when he returned back to his office there was a note from Mr. Greenlee on his desk, taking him off the inspection.

Did you direct Mr. Greenlee to take Mr. Scaff off of the National Mine inspection?

Mr. SPICER. No, sir, no, sir.

The CHAIRMAN. Well, how would that happen without your knowledge or without your support?

Mr. SPICER. There were probably 4,000 mandated inspections that went on every year, Senator, and many other different inspections, and I did not——

The CHAIRMAN. You have got a lot of inspections, but how many do you have which turn up 39 citations for safety violations.

Mr. SPICER. Probably more than—we wrote lots of citations. We wrote 12,000 citations a year.

The CHAIRMAN. Well, in this one, he wrote 39 citations for safety violations and got fired from his job—or fired from this inspection. Is that just completely coincidental, do you think?

Mr. SPICER. Sir, I called Gene Greenlee, who precipitated this action, and asked him what had occurred. I did this yesterday when I got this piece of information. He said that Mr. Scaff had gone up there on a 103(g) inspection—and that is an inspection requested by the union—and that he had been there several days before he even went to see what the union complained about. And normally, the 103(g) is a protection for the miner where they call us and say there is a serious hazard that they want us to come and inspect.

Mr. Greenlee did write—or, he did not write—he called Mr. Scaff's supervisor, who wrote this note to him, and Mr. Greenlee did do this. He felt that he had a good reason. And whether Paul stayed and wrote 39 citations after he did what he went there to do would have been great; but he was there several days, according to Mr. Greenlee, before he investigated the complaint that the United Mine Workers had lodged.

[Information supplied for the record follows:]

Paul:

Gene Greenlee Wants you taken off of the inspections at National Mine. Stay in until you complete your (BBA) inspection reports for that Mine. Fill out all your inspectors Statements for the (103 G) attach them to your citations send them to Hindsman.

The following electrical equipment in enclosed areas are to be classified as Class II Div. 2 and not "Class one". "Dist 7. Policy". Draw off tunnels, top and bottom of silos, dry coal prep plants and coal handling facilities. Dist Policy & National Policy Will also accept Article (250-58) for grounding electrical equipment mounted on the steel structure of a building or structure. "See the attached" Page (1)

Jerry Stantafer
3-16-81

[illegible] to Gene today.

The CHAIRMAN. Well, Mr. Scaff said that he also issued citations on Grundy No. 21 Mine, and that they were later changed. Did you see those citations?

Mr. SPICER. I would have to go back and see if I held a conference on them, Senator. I do not remember. I cannot remember every citation I ever conferenced.

The CHAIRMAN. Well, did you ever tell Mr. Scaff not to issue citations?

Mr. SPICER. Not—I never told Mr. Scaff or any inspector not to issue citations for violations of the regulations, no, sir.

The CHAIRMAN. Well, Mr. Spicer, Paul Helton testified that when he tried to inform miners of their rights under the law, he was chastised by you.

Mr. SPICER. Not true, sir.

The CHAIRMAN. Excuse me—by a supervisor. Did you ever talk to Mr. Helton about the miners' rights?

Mr. SPICER. No, sir. I only heard this yesterday. This occurred—if the allegation occurred—after I left, but I will look into it and see if we have supervisors doing that.

And if we do have supervisors doing that, I will tell them they cannot.

The CHAIRMAN. Well, he also testified that when he issued a citation and a closure order at the Karst-Robbins Coal Company that you took him off the inspection of that company.

Mr. SPICER. No, sir. In about ten years as district manager, Senator, I probably had at least 100 requests to move inspectors, where operators would not want them to be there for whatever reason. To the best of my knowledge, I did this two times, and I think it was for sufficient reasons, and this was not one of the times.

The CHAIRMAN. Well, he evidently was taken off the inspection of that company, and subsequently, as I understand, there was a fatal electrocution at that mine.

Mr. SPICER. I substantiated yesterday that an electrocution occurred at that mine. I did not take him off the inspection.

The CHAIRMAN. Well, knowing what you know now, do you think that fatality could have been prevented?

Mr. SPICER. I am sure, Senator, that most fatalities could have been prevented. I did not research that. What I tried to find out yesterday was if the fatality was related to the 107(a) imminent danger order which I caused Mr. Helton to vacate during the health and safety conference.

That was what I was trying to determine yesterday.

The CHAIRMAN. You vacated an order?

Mr. SPICER. I either vacated it or had Mr. Helton vacate it, yes, sir.

The CHAIRMAN. For what reason?

Mr. SPICER. Understand, the way it looked and the way the testimony came across yesterday was that Mr. Helton was in a mine with explosives wired up or imbedded in the floor of the mine, with high concentrations of loose coal and coal dust, and that he issued a 107(a) order, imminent danger, and I vacated it. Now, what happened, Senator, is that Mr. Helton was making an inspection at this mine; he found six or seven or eight charged holes. He issued an imminent danger order and caused the power to be removed from that area of the mine. He went on up to the section—that is where they mine the coal—he informed the supervisor there that there was an imminent danger order on the mine because of this powder being near the belt line and the possibility of the electricity causing the powder to explode.

He then told the people they had to leave the mine because of the danger. And the supervisor said, "Paul, why don't we ride out on the belt?" And Mr. Helton said, "Okay." And they turned the power back on and road out on the belt.

It is pretty hard to substantiate that there is an imminent danger when we allow the source that is going to detonate the explosives to be re-energized.

When I asked Mr. Helton during a legal health and safety conference—and this is documented on paper—when I asked him why in the world if he thought he had an imminent danger, he let the people re-energize the power, he said he wanted to get them out in a hurry. But they could have crawled out safely. So it would have been hard for me to believe he really had an imminent danger and deliberately exposed himself as well as others to it.

The CHAIRMAN. Well, as I understand, there was a fatality there just after that.

Mr. SPICER. There was, Senator, but I cannot relate it to this incident at all. I will be happy to look into it.

[Information supplied for the record follows:]

Complete below for underground only

51. Number and Types of Underground Openings 0

52. Number of Producing

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| A. *Shafts | B. *Slopes | C. *Drifts | A. MMUs 02 | B. Pits | C. Augers | 53. *Name of Coal Bed | - |

Mine Organization Data

54. Type: A. Corp ☐ B. Partnership ☒ C. Other (specify) ☐

55. Oper Name and Title: Edward Karst Oper.

56. Street or Box Number:

57. City: Louellen

58. State Abbr: Ky

59. Zip Code: 40853

60. Principal Officer for H & S: Edward Karst

61. Street or Box Number:

62. City: Louellen

63. State Abbr: Ky

64. Zip Code: 40853

For Internal Office Use Only

Mine ID: 15 09351

Organization Code: 2 0712

Complete Items 65 through 81 for Inspections and Investigations Only.

65. Action: A. New Entry B. Update C. Delete D. Confirm Delete E. Retrieve

66. Work Group Identifier: 03

67. Activity Code: AAA

68. Event Number: 5100171

69. Date Event Started: 05 11 83 (mo da yr)

70. Date Event Finished: 05 31 83 (mo da yr)

71. Report Type (check one): A. First B. Interim C. Last D. Not Applicable

72. Inspection Dates: From mo da yr To mo da yr

| | Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|---|
| Wk 1 Date | | | | 5/11 | | | |
| Shift | 1 2 3 | 1 2 3 | 1 2 3 | 1 ② 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| Wk 2 Date | | 5/16 | 5/17 | 5/18 | 5/19 | 5/20 | |
| Shift | 1 2 3 | 1 ② 3 | 1 ② 3 | 1 ② 3 | 1 ② 3 | 1 ② 3 | 1 2 3 |
| Wk 3 Date | | | 5/24 | 5/25 | 5/26 | 5/27 | |
| Shift | 1 2 3 | 1 2 3 | 1 ② 3 | 1 ② 3 | 1 ② 3 | 1 ② 3 | 1 2 3 |
| Wk 4 Date | | | 5/31 | | | | |
| Shift | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| Wk 5 Date | | | | | | | |
| Shift | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |

Total Number of Days: 11

73. Daily Production: 400

74. Waste Deposits

A. Number (1) (2) (3) (4)

B. EHC (1) (2) (3) (4) C. Classification (1) (2) (3) (4)

75. Number of Samples

| | | | |
|---|---|---|---|
| A. Air Samples | 7 | B. Rock Dust Spot | |
| C. Rock Dust Survey | 20 | D. Respirable Dust | |
| E. Noise | 3 | | |

76. Area of Inspection

| | | | | | |
|---|---|---|---|---|---|
| A. Company Records | Y | B. Surface Facility | Y | C. Surface Workings | Y |
| D. Underground Workings | Y | E. ATF | N | F. Outby Areas | Y |
| G. Major Construction | N | H. Shaft/Slopes | N | I. Impoundments | N |
| J. Waste Deposits | N | K. Other | Y | | |

L. MMU/Pit Number: (1) 001 - 0 (2) 002 0 (3) - (4) - (6) - (6) - (7) - (8) - (9) - (10) - (11) - (12) - (13) - (14) - (15) - (16) - (17) - (18) - (19) - (20) - (21) - (22) - (23) - (24) - (25) - (26) - (27) - (28) - (29) -

77. Inspection Results

| | | Citations C | O | I | C | Orders C | O | I | C | Safeguards C | O | I | C | Other C | O | I | C |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| A. This Inspection | (1) New Issuances | 1 | 9 | | | 0 | 3 | | | | | | | | | | |
| | (2) Terminations/ Vacations | 1 | 3 | | | 0 | 3 | | | | | | | | | | |
| | (3) Modifications/ Extensions | 0 | 5 | | | | | | | | | | | | | | |
| | (4) Left Pending | 0 | 5 | | | | | | | | | | | | | | |
| B. Previously Issued | (5) ~~Modifications~~/ Extensions | 0 | 1 | | | | | | | | | | | | | | |
| | (6) Terminations/ ~~Vacations~~ | 0 | 3 | | | | | | | | | | | | | | |

78. Is Mine Safety Committee Maintained? Yes ☐ No ☒

79. Is there a Designated Representative of Miners? Yes ☐ No ☒

80. Independent Contractor Codes

81. 103(i) Classification

A. Current Status (check one): In 103(i) ☐ Not in 103(i) ☒

B. Applicable 103(i) Code

C. Date Entered Current 103(i) Status mo da yr

This report is based on an inspection made under the Federal Mine Safety and Health Act of 1977.

Signature of Authorized Representative who is Responsible for Inspection/Investigation: Paul E. Helt

James Johnson

Robert [illegible]

AR Number: 22774

for underground only May 83 15-09351 Karst Collieries Coal Co. Inc. No. 4

Types of Underground Openings

B. *Slopes C. *Drifts

52. Number of Producing A. MMUs 02 B. Pits C. Augers

53. *Name of Coal Bed

A. Corp. ☒ B. Partnership C. Other (specify)

55. Oper Name and Title: Edward Karst Oper.

56. Street or Box Number

57. City: Louellen

58. State Abbr: Ky

59. Zip Code: 40853

60. Principal Officer for H&S: Edward Karst

61. Street or Box Number

62. City: Louellen

Ky

64. Zip Code: 40853

For Internal Office Use Only

Mine ID: 15 09351

Organization Code: 2 0712

Complete Items 65 through 81 for Inspections and Investigations Only.

A. New Entry B. Update C. Delete D. Confirm Delete E. Retrieve

66. Work Group Identifier: 03

67. Activity Code: AAA

68. Event Number: 5100171

69. Date Event Started: 05 11 83 (mo da yr)

70. Date Event Finished: 05 31 83 (mo da yr)

A. First B. Interim C. Last D. Not Applicable

From mo da yr To mo da yr

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|
| | | | 5/11 | | | |
| 1 2 3 | 1 2 3 | 1 2 3 | 1 [✓ 2] 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| | 5/16 | 5/17 | 5/18 | 5/19 | 5/20 | |
| 1 2 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 2 3 |
| | | 5/24 | 5/25 | 5/26 | 5/27 | |
| 1 2 3 | 1 2 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 [✓ 2] 3 | 1 2 3 |
| | | 5/31 | | | | |
| 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |
| | | | | | | |
| 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 | 1 2 3 |

Total Number of Days: 11

73. Daily Production: 400

74. Waste Deposits

A. Number (1) (2) (3) (4)

B. FHC (1)

C. Classification (1)

75. Number of Samples

| | | | |
|---|---|---|---|
| A. Air Samples | 7 | B. Rock Dust Spot | |
| C. Rock Dust Survey | 20 | D. Respirable Dust | |
| E. Noise | 3 | | |

76. Area of Inspection

| | | | | | |
|---|---|---|---|---|---|
| A. Company Records | Y | B. Surface Facility | Y | C. Surface Workings | Y |
| D. Underground Workings | Y | E. ATF | N | F. Outby Areas | Y |
| G. Major Construction | N | H. Shaft/Slopes | N | I. Impoundments | N |
| J. Waste Deposits | N | K. Other | Y | | |

L. MMU/Pit Number (1) 001 - 0 (2) 002 - 0 (3) - (4) - (5) - (6) - (7) - (8) - (9) - (10) - (11) - (12) - (13) - (14) - (15) - (16) - (17) - (18) - (19) - (20) -

77. Inspection Results

| | | Citations C | Citations O | Citations I | Citations C | Orders C | Orders O | Orders I | Orders C | Safeguards C | Safeguards O | Safeguards I | Safeguards C | Other C | Other O | Other I | Other I |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| A. This Inspection | (1) New Issuances | 1 | 9 | | | 0 | 3 | | | | | | | | | | |
| | (2) Terminations/ Vacations | 1 | 3 | | | 0 | 3 | | | | | | | | | | |
| | (3) Modifications/ Extensions | 0 | 5 | | | | | | | | | | | | | | |
| | (4) Left Pending | 0 | 5 | | | | | | | | | | | | | | |
| B. Previously Issued | (5) ~~Modifications~~/ Extensions | 0 | 1 | | | | | | | | | | | | | | |
| | (6) Terminations/ ~~Vacations~~ | 0 | 3 | | | | | | | | | | | | | | |

78. Is Mine Safety Committee Maintained? Yes No ☒

79. Is there a Designated Representative of Miners? Yes No ☒

80. Independent Contractor Codes

81. 103(i) Classification

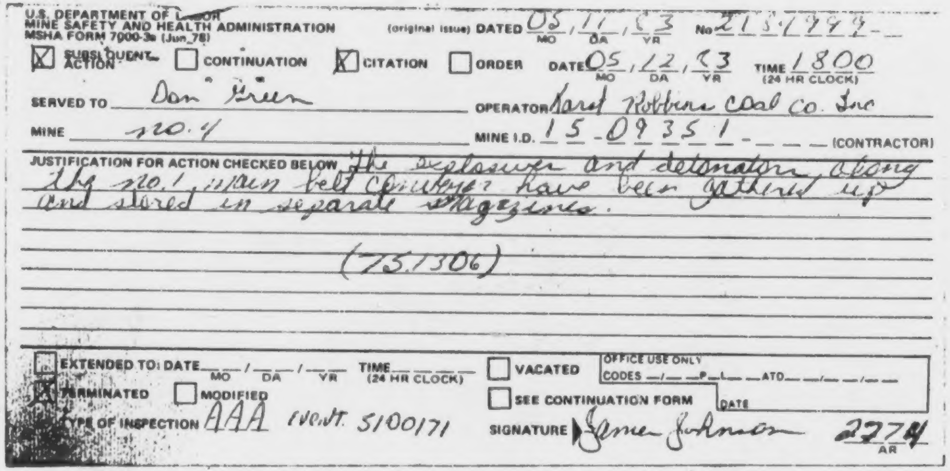
A. Current Status: In 103(i) ☐ (check one) Not in 103(i) ☒

B. Applicable 103(i) Code

C. Date Entered Current 103(i) Status mo da yr

This report is based on an inspection made under the Federal Mine Safety and

Signature of Authorized Representative who is Responsible for Inspection/Investigation: Paul D. Helton 204



U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
MSHA FORM 7000-3a (Jun 78)

(original issue) DATED 05 / 11 / 83 (MO / DA / YR) No. 2151999

☒ SUBSEQUENT ACTION ☐ CONTINUATION ☒ CITATION ☐ ORDER DATE 05 / 12 / 83 (MO / DA / YR) TIME 1800 (24 HR CLOCK)

SERVED TO Don Green

OPERATOR Karst Robbins Coal Co. Inc

MINE no. 4

MINE I.D. 15-09351 - ___ (CONTRACTOR)

JUSTIFICATION FOR ACTION CHECKED BELOW The explosives and detonators along the no. 1 main belt conveyor have been gathered up and stored in separate magazines.

(75.1306)

☐ EXTENDED TO: DATE ___ / ___ / ___ (MO / DA / YR) TIME ___ (24 HR CLOCK)

☐ VACATED

OFFICE USE ONLY
CODES ___ / ___ ___ P ___ L ___ ATO ___ ___ / ___ ___ / ___ ___
DATE

☒ TERMINATED ☐ MODIFIED

☐ SEE CONTINUATION FORM

TYPE OF INSPECTION AAA Event. 5100171

SIGNATURE James Johnson 2274 AR

Mine Citation/Order

**U.S. Department of Labor**
Mine Safety and Health Administration

Section I—Violation Data

1. Type of issuance (check one) Citation ☒ Order ☐ Safeguard ☐
2. Date 05 11 83 (Mo. Da. Yr.)
3. Time (24 hr. clock) 1030
4. Citation/Order Number 2184999

5. Served To Don Green
6. Operator East Robbins Coal Co. Inc.
7. Mine No. 4
8. Mine ID 15-09351 (Contractor)
9. Type of Action 104-d-1,
10. Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act C. Part/Section of Title 30 CFR 75.1306-
11a Significant and Substantial (see reverse) ☒
11b. Written Notice ☐

12. Condition or Practice

Explosives and Electric Detonators were not stored properly nor provided with magazines in that.
At Various locations in the No. 1 Main belt entry the explosives and Detonators were lying together in the same containers and in some instances lying out on the mine floor which was damp at various locations.
→ The operator had hidden several Explosives and Electric detonators together in the original containers along the ribs in the No. 1 belt entry also.
→ The operator had also stored in the Return aircourse approximately 700 feet from No. 1 Charging station Explosives and Electric detonators together in

13. Area or Equipment

a Metal container approximately (15) sticks of explosives and approximately (30) electric Detonators (metal exposed to explosives and Detonators inside metal box.
In the belt entry where explosives and Electric detonators were hidden was an energized 4160 volt power cable. This condition was one of the factors that contributed to the issuance of Imminent Danger Order No. 2185000 dated 5-11-83

14. Initial Action Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐
15. Citation/Order Number
16. Dated Mo. Da. Yr.
17. Termination Due A. Date 05 11 83 B. Time (24 hr. clock) 1220 C. Signature Paul D. Hatter D. AR Number 30420 ☐ See continuation form (MSHA Form 7000-3a)

Section II—Termination Action

18. Action to Terminate

19. Terminated A. Date Mo. Da. Yr. B. Time (24 hr. clock) C. Signature D. AR Number

Section III—Inspector's Evaluation

20. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☒ D. High ☐ E. Reckless Disregard ☐

21. Gravity
A. The occurrence of the event against which the cited standard is directed was:
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be:
No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☒
C. Number of persons who would be affected if the event occurred or were to occur: 01

22. Good Faith
A. Failure to abate within the time period given ☐
B. Signature
C. AR Number

Section IV—Automated System Data

23. Type of Inspection (activity code) 1 4 1
24. Event Number 5 1 0 [illegible] 1 7 1
25. Primary or Mill

MSHA Form 7000-3, Apr 82, (revised)

Mine Citation/Order Continuation

**U.S. Department of Labor**
Mine Safety and Health Administration

1. Dated (original issue): 05 11 83 (Mo. Da. Yr.)
2. Citation/Order Number: 2184999-01
3. Subsequent Action ☒ Continuation ☐
4. Date: 01 12 84 (Mo. Da. Yr.)
5. Time (24 hr. clock): 1500
6. Served To: D. Green
7. Operator: Kent Robbins Coal Co. Inc. Mine: No. 4
8. Mine ID: 15-09351- (Contractor)

Justification For Action

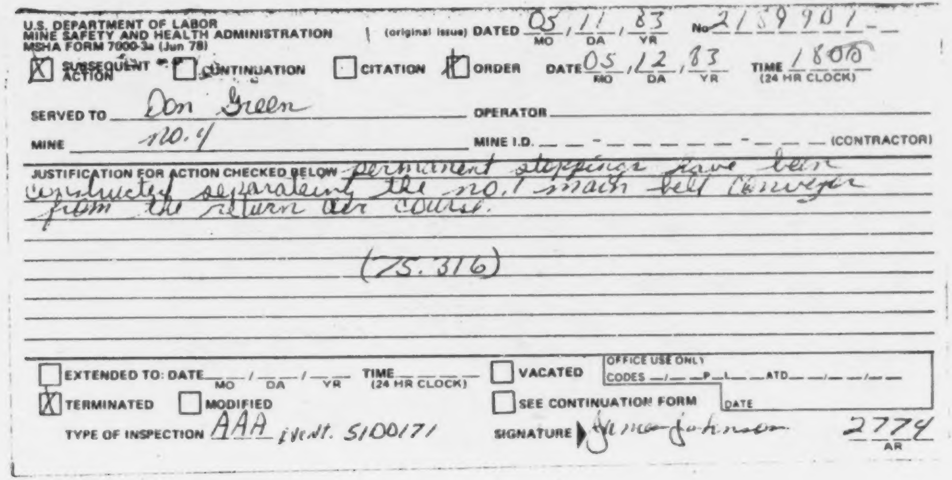
Citation No. 2184999 is hereby modified to read Item (9) 104 a citation also Item 20, negligence (E) Reckless Disregard Item 21, A Gravity highly likely.

(Item (9) as suggested by Assessments office according to memo by Lamonica

NOTICE
Notation

9. Extended To: ☐ 9a. Date: Mo. Da. Yr. 9b. Time (24 hr. clock):
10. Vacated ☐ Terminated ☐ Modified ☒
11. See Continuation Form ☐
12. Type of Inspection: DKS
13. Event Number:
14. Signature:
AR Number:

MSHA Form 7000-3a., Apr 82 (revised)



U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
MSHA FORM 7000-3a (Jun 78)

1 (original issue) DATED 05 / 11 / 83 (MO / DA / YR) No 2159901

☒ SUBSEQUENT ACTION ☐ CONTINUATION ☐ CITATION ☒ ORDER DATE 05 / 12 / 83 (MO / DA / YR) TIME 1800 (24 HR CLOCK)

SERVED TO Don Green OPERATOR

MINE no. 4 MINE I.D. _ _ - _ _ _ _ _ - _ _ _ (CONTRACTOR)

JUSTIFICATION FOR ACTION CHECKED BELOW permanent stoppings have been constructed separating the no. 1 main belt conveyor from the return air course.

(75.316)

☐ EXTENDED TO: DATE __ / __ / __ (MO / DA / YR) TIME ____ (24 HR CLOCK)

☐ VACATED

☒ TERMINATED ☐ MODIFIED

☐ SEE CONTINUATION FORM

OFFICE USE ONLY
CODES _/_ _P_L_ _ATD_ _/_ _/_ _
DATE

TYPE OF INSPECTION AAA event. 5100171

SIGNATURE James Johnson 2774 AR

Mine Citation/Order

**U.S. Department of Labor**
Mine Safety and Health Administration

**Section I—Violation Data**

1. Type of issuance (check one) Citation ☐ Order ☑ Safeguard ☐
2. Date Mo. Da. Yr.
3. Time (24 hr. clock)
4. Citation/Order Number 2189901
5. Served To
6. Operator [illegible] Co. Inc.
7. Mine
8. Mine ID (Contractor)
9. Type of Action
10. Violation A. Health ☐ Safety ☐ Other ☐ B. Section of Act C. Part/Section of Title 30 CFR 75.316
11a Significant and Substantial (see reverse) ☐
11b. Written Notice ☐
12. Condition or Practice

[illegible] effort [illegible] made by the operator
[illegible] stopping [illegible] which had been
taken [illegible] operator on the No. 1
Main belt line stopping separating belt entry from
the return air course was not rebuilt.

13. Area or Equipment No. 4 Kent [illegible] Coal Co. Inc. Mine.

14. Initial Action Citation ☒ Order ☐ Safeguard ☐ Written Notice ☐
15. Citation/Order Number 2187429
16. Dated 02 08 83 Mo. Da. Yr.
17. Termination Due: A. Date Da. Yr. B. Time (24 hr. clock) C. Signature D. AR Number ☐ See continuation form (MSHA Form 7000-3a)

**Section II—Termination Action**

18. Action to Terminate

19. Terminated A. Date Mo. Da. Yr. B. Time (24 hr. clock) C. Signature D. AR Number

**Section III—Inspector's Evaluation**

20. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☐ E. Reckless Disregard ☐

21. Gravity
A. The occurrence of the event against which the cited standard is directed was:
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be:
No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☐
C. Number of persons who would be affected if the event occurred or were to occur:

22. Good Faith
A. Failure to abate within the time period given ☐ B. Signature C. AR Number

**Section IV—Automated System Data**

23. Type of Inspection (activity code) 24. Event Number 25. Primary or Mill

MSHA Form 7000-3, Apr 82 (revised)

Mine Citation/Order

US Department of Labor
Mine Safety and Health Administration

✓

Section I – Violation Data

1 Type of Issuance (check one) Citation ☒ Order ☐ Safeguard ☐

2 Date 05 11 83

3 Time (24 hr clock) 1010

4 Citation/Order Number 2189902

5 Served To

6 Karst Robbins Coal Co. Inc.

7 Mine Don Green No. 4

8 Mine ID 15-09351 (Contractor)

9 Type of Action 104-A

10 Violation A Health ☐ Safety ☒ Other ☐ B Section of Act C Part/Section of Title 30 CFR 75.400

11a Significant and Substantial (see reverse) ☒

11b Written Notice ☐

12 Condition or Practice

Float Coaldust very black in color was allowed to be deposited on Rockdusted surfaces from the No. 1 Return Portal to the No. 1 Battery charging station in the Return air course, 4000 ft in length. Explosives and Electric Detonators stored in a metal box which if stray or active electric current could contribute to an ignition source for the float coal dust.

This condition was one of the factors that contributed to the issuance of Imminent Danger Order No. 2185000 dated 5-11-83, Therefore no abatement time.

13 Area or Equipment

14 Initial Action Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐

15 Citation/Order Number

16 Dated Mo Da Yr

17 Termination Due A Date Mo Da Yr B Time (24 hr clock)

C Signature Paul O. Helton

D AR Number 20420

☐ See continuation form (MSHA Form 7000-3a)

Section II – Termination Action

18 Action to Terminate

JAN 25 1984

19 Terminated A Date Mo Da Yr B Time (24 hr clock) C Signature D AR Number

Section III – Inspector's Evaluation

20 Negligence (check one) A None ☐ B Low ☐ C Moderate ☒ D High ☐ E Reckless Disregard ☐

21 Gravity

A The occurrence of the event against which the cited standard is directed was No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐

B The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☒

C Number of persons who would be affected if the event occurred or were to occur 9

22 Good Faith

A Failure to abate within the time period given ☐

B Signature

C AR Number

Section IV – Automated System Data

23 Type of Inspection Activity Code AAA

24 Event Number 5100171

25 Primary or Mill

MSHA Form 7000-3 Apr 82 (revised)

U.S. Department of Labor
Mine Safety and Health Administration ✓

1. Date 05 11 83 2. Citation/Order Number 2139902-

3. Subsequent Action ☒ Continuation ☐ 4. Date 05 26 83 (Mo Da Yr) 5. Time (24 hr clock) 1700 6. Served To Dan Green

7. Operator Kent Robbins Coal Co. Inc. Mine No. 4 8. Mine ID 15-09351- (Contractor)

Justification For Action

The float coal dust in the no. 1 return air course has been all rock dusted.

(75.400)

JAN 25

9. Extended To ☐ 9a. Date Mo Da Yr 9b. Time (24 hr clock) 10. Vacated ☐ Terminated ☒ Modified ☐

11. See Continuation Form ☐ 12. Type of Inspection AAA 13. Event Number 5100171

14. Signature [illegible] Johnson AR Number 22774

MSHA Form 7000-3a, Apr 82 (revised)

Assessment copies being conferenced 6/1/83

Mine Citation/Order

U.S. Department of Labor
Mine Safety and Health Administration

✓

**Section I - Violation Data**

1 Type of issuance (check one) Citation ☒ Order ☐ Safeguard ☐
2 Date 05 11 83 (Mo Da Yr)
3 Time (24 hr clock) 1110
4 Citation/Order Number 2189903
5 Served to Don Green
6 Operator Kaist Robbins Coal Co Inc.
7 Mine No. 4
8 Mine ID 15-09351 (Contractor)
9 Type of Action 104-A-
10 Violation A Health ☐ Safety ☒ Other ☐ B Section of Act C Part/Section of Title 30 CFR 75.400
11a Significant and Substantial (see reverse) ☒
11b Written Notice ☐

12 Condition or Practice

Float Coal dust was allowed to be deposited on Rock-dusted surfaces in the No. 1 Main belt entry from the Portal to the tail Roller a distance of approximately 4000 feet in length Very black in color. Misfired shots along with explosives and electric detonators improperly stored could contribute to an ignition source.

This condition was one of the factors that contributed to the issuance of Imminent Danger Order No. 2185000 dated 05-11-83 Therefore no abatement time.

13 Area or Equipment

14 Initial Action Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐
15 Citation Order Number
16 Dated Mo Da Yr
17 Termination Due A Date Mo Da Yr B Time (24 hr clock)
C Signature Paul O. Helton
D AR Number 20426
☐ See continuation form (MSHA Form 7000-3a)

**Section II - Termination Action**

18 Action to Terminate

JAN 25 1984

19 Terminated A Date Mo Da Yr B Time (24 hr clock) C Signature D AR Number

**Section III - Inspector's Evaluation**

20 Negligence (check one) A None ☐ B Low ☐ C Moderate ☒ D High ☐ E Reckless Disregard ☐

21. Gravity
A. The occurrence of the event against which the cited standard is directed was
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☒ Highly Likely ☐ Occurred ☐
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be
No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☒
C Number of persons who would be affected if the event occurred or were to occur 9

22. Good Faith
A. Failure to abate within the time period given ☐
B Signature
C AR Number

**Section IV - Automated System Data**

23 Type of inspection activity (code) AAA
24 Event Number 5100171
25 Primary or Mill

MSHA Form 7000-3, Apr 82 (revised)

ASSESSMENT Copies being Contested [illegible]

Mine Citation/Order
Continuation

U.S. Department of Labor
Mine Safety and Health Administration ✓

1. Dated Original Issue: 05 11 83
2. Citation/Order Number: 2199903-
3. Subsequent Action ☒ Continuation ☐
4. Date: 05 26 83 (Mo Da Yr)
5. Time (24 hr clock): 1700
6. Served To: Don Green
7. Operator: Kent Robbins Coal Co. Inc Mine: no. 4
8. Mine ID: 15-09351- (Contractor)

Justification For Action

The float coal dust along the no. 1 main belt conveyor has been cleaned up and well rock dusted.

(75.400)

9. Extended To ☐ 9a. Date Mo Da Yr 9b. Time (24 hr clock)
10. Vacated ☐ Terminated ☒ Modified ☐
11. See Continuation Form ☐
12. Type of Inspection: AAA
13. Event Number: 5100171
14. Signature: Arme Johnson
AR Number: 22774

Assessment Copies w/
AR No Conferenced

[illegible] Order

U.S. Department of Labor
Mine Safety and Health Administration

✓

**Section I—Violation Data**

1. Type of Issuance (check one) Citation ☐ Order ☒ Safeguard ☐

2. Date 05 11 83

3. Time (24 hr. clock) 1010

4. Citation/Order Number 2185000

5. Served To Don Green

6. Operator Karst Robbins Coal Co. Inc.

7. Mine No. 4

8. Mine ID 15-09351 (Contractor)

9. Type of Action 107-a-

10. Violation A. Health ☐ Safety ☒ Other ☐ B. Section of Act C. Part/Section of Title 30 CFR

11a. Significant and Substantial (see reverse) ☐

11b. Written Notice ☐

12. Condition or Practice

Where (5) Misfires with electric detonators had occured and (3) of the (5) electric detonators leg wires were not shunted to prevent detonation from possible source of active or stray elective current from the 4160 V.A.C. power cable lying on the mine floor at various locations in the No. 1 Main belt Entry which is used for mantrip purposes. The operator had failed to remove the Misfired Shots as stipulated in 30 CFR. 15-24 Section (7)(b). The location of the Misfires were approximatley 3000 feet inby the portal and the operator had installed the No. (1) Main belt conveyor through the effected area. 4000 feet

Float coal dust Very black in color was allowed to be deposited on Rock-dusted surfaces from the Portal to the tail roller from Rib to Rib, also the Return air course from

13

the No. 1 entry Portal to the No. 1 Battery charging station which is also 4000 feet in length had float coal dust deposited on Rock dusted surfaces Very black in color. (75-400 CFR)

Misfired Shots Shall be removed and the entire length of No. 1 Main belt conveyor and the Return air course Shall be well rock dusted

14. Initial Action Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐

15. Citation Order Number

16. Dated Mo Da Yr

17. Termination Due A. Date Mo Da Yr B. Time (24 hr. clock)

C. Signature Paul D. Helton

D. AR Number 20426

E. See continuation form (MSHA Form 7000-3a)

**Section II—Termination Action**

18. Action to Terminate

19. Terminated A. Date Mo Da Yr B. Time (24 hr. clock) C. Signature D. AR Number

**Section III—Inspector's Evaluation**

20. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☐ E. Reckless Disregard ☐

21. Gravity

A. The occurrence of the event against which the cited standard is directed was
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐

B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be
No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☐

C. Number of persons who would be affected if the event occurred or were to occur

22. Good Faith

A. Failure to abate within the time period given ☐

B. Signature

C. AR Number

**Section IV—Automated System Data**

23. Type of Inspection activity code AAA

24. Event Number 5100171

25. Primary or Mill

MSHA Form 7000-3, Apr 82 (revised)

ASSESSMENT COPIES being CONFERENCED
6/?/83

U.S. DEPARTMENT OF LABOR
MINE SAFETY AND HEALTH ADMINISTRATION
MSHA FORM 7000-3a (Jun 78)

(original issue) DATED 05 / 11 / 83 (MO DA YR) No. 2185000

☒ SUBSEQUENT ACTION ☐ CONTINUATION ☐ CITATION ☒ ORDER DATE 05 / 12 / 83 (MO DA YR) TIME 1800 (24 HR CLOCK)

SERVED TO Don Green OPERATOR Karst Robbins Coal Co. Inc.

MINE No. 4 MINE I.D. 15-09351 (CONTRACTOR

JUSTIFICATION FOR ACTION CHECKED BELOW The five misfired shots in the no. 1 main belt entry approximately 3000 feet inby the portal have been removed from the mine. The float coal dust was cleaned up and well rock dusted in the area.

[illegible]. (107-A)

JAN 25 1984

☐ EXTENDED TO DATE ___ / ___ / ___ (MO DA YR) TIME ___ (24 HR CLOCK) ☐ VACATED

☒ TERMINATED ☐ MODIFIED ☐ SEE CONTINUATION FORM

OFFICE USE ONLY
CODES ___ / ___ P ___ ATD ___
DATE

TYPE OF INSPECTION AAA EVENT. 5100171

SIGNATURE James Johnson 2774

ASSESSMENT COPIES AR DIST

Mine Citation/Order
Continuation

U.S. Department of Labor
Mine Safety and Health Administration

1 Dated (original) 05 11 83 Mo Da Yr
2 Citation/Order Number 2185000-
3 Subsequent Action ☑ Continuation ☐
4 Date 12 05 84 Mo Da Yr
5 Time (24 hr clock) 1010
6 Served To EDDIE KARST
7 Operator KARST ROBINS COAL CO INC
Mine NO 4
8 Mine ID 15-09351-
(Contractor)

Justification For Action

THE ORDER WAS ISSUED BECAUSE EXPLOSIVES, CONTAINING DETONATORS, FLOAT DUST, AND AN ENERGIZED 4160V-AC POWER CABLE WERE PRESENT IN THE No. 1 MAIN BELT ENTRY. MINER SUBSEQUENTLY RODE THE BELT, BEFORE THE CABLE WAS DE-ENERGIZED AND THE OTHER CONDITIONS WERE CORRECTED, NEGATING THE THE IMMINENT DANGER.

JAN 25

9 Extended To ☐ 9a Date Mo Da Yr 9b Time (24 hr clock)
10 Vacated ☑ Terminated ☐ Modified ☐
11 See Continuation Form ☐
12 Type of Inspection AAA
13 Event Number 5100171
14 Signature
AR Number 21412
MSHA Form 7000-3a, Sep 82 (revised)

The **Chairman**. Mr. Spicer, Mr. Helton said that you did not defend him when he was accused by Clyde Bennett of writing "gray-line" citations.

Mr. **Spicer**. I remember meeting in the Harlan field office, Senator, with Helton, his supervisor, and a couple of people from the Bennett Coal Company, but I—if he was wrong, I did not defend him. I would say that. I would have had a discussion about the proper procedures.

The **Chairman**. Well, why wouldn't you have defended him?

Mr. **Spicer**. Because we have a responsibility to enforce a regulation. If the regulation is there, we have an obligation to cite a violation. If there is no regulation, we do not have the authority to cite a violation.

Senator **Hatch**. That is another reason why we have got to go after these regulations and get them done and get these parties together and force them to sit down and do what is right.

Mr. **Spicer**. I agree, sir.

Senator **Hatch**. That would help you in your job, wouldn't it?

Mr. **Spicer**. Yes, sir.

Senator **Hatch**. I mean, it is one thing to be called before here and be told that things are wrong, but if you cannot act because there are not the appropriate regulations, we have got to straighten it out.

Mr. McMillan, you have got to get that done.

Sorry, Mr. Chairman. I did not mean to interrupt you.

The **Chairman**. No, that is fine.

As I understand it—do you have this exhibit before you, Mr. Spicer?

Mr. **Spicer**. Yes, sir.

The **Chairman**. Included in the exhibit it says, "In less than five years, ten fatalities occurred in mines operated by Mr. George Clyde and Dwayne Bennett. Of these ten fatalities, seven were caused by action of the mine roof."

Now, here you have these fatalities, you have this fellow trying to get something done about it, and at least he is saying that you are not willing to defend him.

Mr. **Spicer**. I am not sure that I do not defend, or did not defend people, Senator, but I did not allow people to write violations if there was no regulation.

The **Chairman**. Well, the memorandum indicated that in less than five years, ten fatalities occurred in those mines. And you would think that would be a pretty significant fact in determining whether you are going to go ahead and defend someone that wants to try and do something about that situation to prevent future fatalities.

[Information supplied for the record follows:]

JUN 20 1985

CMS&H Memo No. HQ-85-547-S (6026)

MEMORANDUM FOR: WILLARD E. QUERRY

FROM : JOSEPH A. LAMONICA Signed Jerry L. Spicer for
Administrator
for Coal Mine Safety and Health

SUBJECT : Fatalities at the No. 1 Mine, Manalapan Mining Company, Inc., Highsplint, Harlan County, Kentucky

The rib roll fatality which occurred on June 4, 1985, at the subject mine is the second fatality at this mine within a seven-month period. Both fatalities were the result of roof action.

We have reviewed the fatalities listed below which occurred since 1980 in mines operated by members of the Bennett family. We are attaching a copy of the abstract of each investigation except for the most recent fatality; for that accident, we are attaching a copy of the preliminary report of the accident.

| Date | Mine | Type of Accident | Operator | No. Killed |
|---|---|---|---|---|
| 09/06/80 | No. H-2 | Roof Fall | Clyde Bennett | 1 |
| 06/03/81 | Grays Knob | Inundation (blackdamp) | Clyde Bennett | 3 |
| 04/26/82 | Rice Harlan | Roof Fall | George Bennett | 2 |
| 05/10/83 | No. 1 | Roof Fall | Clyde Bennett | 1 |
| 08/01/84 | No. 1 | Roof Fall | Clyde Bennett | 1 |
| 11/07/84 | No. 1 | Roof Fall | Duane Bennett | 1 |
| 06/04/85 | No. 1 | Roof Fall (rib roll) | Duane Bennett | 1 |

In less than five years, ten fatalities occurred in mines operated by Messrs. George, Clyde, and Duane Bennett. Of these ten fatalities, seven were caused by action of the mine roof. Two roof fall fatalities occurred within fifteen months in the same mine operated by Mr. Clyde Bennett and two roof fall fatalities occurred within a seven-month period in the same mine operated by Mr. Duane Bennett.

This number of fatalities is unacceptable. Further, in each Report of Investigation, the investigator states, in effect, that the fatality was caused by management's failure to take certain safety precautions.

In view of this dismal record, you are requested to provide me, immediately, with an action plan that addresses the issues relating to these many fatalities. The action plan should set forth what you will do immediately, in the short term and long range, that will have a positive impact on the mines operated by the Bennett family.

If you have any questions, please contact myself or Mr. Herschel H. Potter.

Attachments

cc: J. Lamonica
ARF
J. Spicer
C. Lester
H. Potter
J. Carter
D. Cavanaugh
MSHA Files, Rm. 737A, Code-6026--Roof Control

MCS:HHPotter:mag:06/19/85

MESA Form [illegible]
February, 1977

## Abstract of Investigation

Title of Investigation: Fatal Roof Fall Accident

Report Release Date: 10-23-80

Mine: No. H-2 Mine

Mine I.D. Number: 15-11964

Company: Harlan Cumberland Coal Company

Town, County, State:
Louellen, Harlan County, Kentucky

Author(s):
Lawrence Spurlock

**Mine Information**

Daily Production 200 tons

Surface Employment 1

Underground Employment 7

Name of Coalbed Harlan Seam

Thickness of Coalbed 64 inches

Last Quarter Injury Frequency Rate (HSAC) for:
Industry 11.99
This Operation 0

Training Program Approved yes

Mine Profile Rating None

Originating Office - Mine Safety and Health Administration, Coal Mine Safety & Health

District 7

Address: 616 Manchester Street
Barbourville, Kentucky 40906

Authority - This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977 (Pub. L. 95-164).

### Abstract

On Saturday, September 6, 1980, about 8:45 a.m., a roof fall accident occurred in the right crosscut of the No. 2 entry, 001 section of the H-2 Mine, Harlan Cumberland Coal Company, resulting in the death of Robin Rice, continuous-mining machine operator helper. Rice had 3 years and 6 months total mining experience, 1 year and 2 months with this company, and 7 weeks at the H-2 Mine. The accident and resultant fatality occurred when the victim proceeded into an area of known loose roof before the roof was supported or taken down.

Information for this report was compiled through a MESA Investigation that was started September 6, 1980

Company Officials:

| | Name | Address |
|---|---|---|
| President | Clyde V. Bennett | Grays Knob, Kentucky 40829 |
| Superintendent | None | |
| Safety Director | Wallace Harris | Same |
| Principle officer - H&S | Robert Burgan | Louellen, Kentucky |
| Labor Organization | None | |
| Chairman - H&S Committee | None | |

## ABSTRACT OF INVESTIGATION

*Title of Investigation:* Multiple Fatal Inundation (Blackdamp) Accident

*Report Release Date:* MAR 26 1982

*Mine:* No. 5 Mine

*Mine ID Number:* 15-05184

*Company:* Grays Knob Coal Company

*Town, County, State:* Grays Knob, Harlan County, Kentucky

*Author(s):*
Harry J. Carter
Earnest C. Teaster, Jr.

*Mine Information*

*Daily Production* ...200 tons...

*Surface Employment* ...1...

*Underground Employment* ...8...

*Name of Coalbed* ...Harlan...

*Thickness of Coalbed* ...42" to 60"...

*Last Quarter Injury Incident Rate (HSAC) for:*
*Industry* ...12.88...
*This Operation* ...0.00...
*Training Program Approved* ...Yes...
*Mine Profile Rating* ...None...

*Originating Office - Mine Safety and Health, Administration, Coal Mine Safety and Health, Office of the Administrator*
*Address: 4015 Wilson Boulevard*
*Arlington, Virginia 22203*

*Authority - This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977 (Public Law 91-173, as amended by Public Law 95-164)*

### *Abstract*

At approximately 2:30 p.m., on Wednesday, June 3, 1981, a mine inundation accident occurred at the face of the No. 1 room of the second set of rooms off east main at Grays Knob Coal Company's No. 5 mine. The accident resulted in the death of Harvey L. Hill, Roger D. Clem, and Jerry W. Laws. Hill, age 30, had a total of 8-1/2 years mining experience, the last 3 years at this mine as a section foreman. Clem, age 23, had a total of 5 years mining experience, the last 3 weeks at this mine as a roof-bolting machine operator. Laws, age 25, had 4 years mining experience, the last 2 weeks at this mine as a roof-bolting machine operator helper. The accident occurred when the continuous mining machine unintentionally penetrated the abandoned adjacent No. 1 mine, which allowed a sudden inrush of blackdamp (oxygen-deficient atmosphere) that permeated the entire section. Management's failure to require that boreholes be drilled in advance of the working faces was the cause of this accident.

*Information for this report was compiled through a MSHA investigation that was started* ...June 3, 1981...

| *Company Officials:* | *Name* | *Address* |
|---|---|---|
| *President* | Clyde V. Bennett III | Grays Knob, Kentucky 40829 |
| *Superintendent* | Joe Felosi | Grays Knob, Kentucky 40829 |
| *Safety Director* | Wallace Harris | Grays Knob, Kentucky 40829 |
| *Principle Officer - H&S* | Wallace Harris | Grays Knob, Kentucky 40829 |
| *Labor Organization* | Non-agreement | |
| *Chairman - H&S Committee* | N/A | |

## ABSTRACT OF INVESTIGATION

*Title of Investigation:*
Multiple Fatal Roof Fall Accident

*Report Release Date:* JUL 29 1982

*Mine:* Rice Harlan Mine

*Mine ID Number:* 15-06778

*Company:* Alliance of Puckett Coal Company, Incorporated
*Town, County, State:* Pathfork (Alva), Harlan County, Kentucky
*Author(s):* James D. Carter
Gene B. Fuller

*Mine Information*

*Daily Production* ........ 100 tons

*Surface Employment* ........ 1

*Underground Employment* ........ 16

*Name of Coalbed* ........ Harlan

*Thickness of Coalbed* ........ 35 inches

*Last Quarter Injury Incident Rate (HSAC) for:*
*Industry* ........ 10.78
*This Operation* ........ No accidents reported
*Training Program Approved* ........ Yes
*Mine Profile Rating* ........ None

*Originating Office - Mine Safety and Health Administration, Coal Mine Safety and Health, Office of the Administrator*
*Address: 4015 Wilson Boulevard*
*Arlington, Virginia 22203*

*Authority - This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977 (Public Law 91-173, as amended by Public Law 95-164)*

### *Abstract*

On April 26, 1982, at approximately 11 p.m., a fall of roof occurred at the face of the right crosscut off No. 2 entry of the No. 001 section of the Rice Harlan Mine, Alliance of Puckett Coal Company, Incorporated. The fall resulted in the deaths of Charles Honeycutt, jack setter, and Bill Perry, timberman. The miners had 3 and 3-1/4 years of mining experience, respectively. The accident occurred because management permitted miners to work under known hazardous roof that had not been properly supported.

*Information for this report was compiled through a MSHA investigation that was started* ... April 28, 1982 ........

| *Company Officials:* | *Name* | *Address* |
|---|---|---|
| *President* | George Bennett | Pathfork, Kentucky 40863 |
| *Superintendent* | None | |
| *Safety Director* | Anita Day | Pathfork, Kentucky 40853 |
| *Principle Officer - H&S* | George Bennett | Pathfork, Kentucky 40863 |
| *Labor Organization* | None | |
| *Chairman - H&S Committee* | None | |

Report of Investigation

Mine Safety and Health Administration

**Authority—**

This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164.

**SECTION A—IDENTIFICATION DATA**

1. Title of investigation: Fatal Fall of Roof Accident
2. Date MESA investigation started: 5/11/83
3. Report release date: 8/5/83
4. Mine: No. 1
5. Mine ID number: 15-00590
6. Company: Dixie Fuel Company 1
7. Town, County, State: Crummies, Harlan, KY
8. Author(s): Edward R. Morgan

**[illegible]**

18. Mine Safety and Health Administration
Coal Mine Health and Safety District No.: 7
Address: P. O. Box 572, Barbourville, KY 40906

**SECTION B—MINE INFORMATION**

9. Daily production: 700
10. Surface employment: 5
11. Underground employment: 28
12. Name of coalbed: Upper Mason
13. Thickness of coalbed: 38 inches

**[illegible]**

14. Industry: 8.14
15. This operation: 0.00
16. Training program approved: yes
17. Mine Profile Rating: none

**[illegible] ABSTRACT**

On Tuesday, May 10, 1983, at 12 noon, a fall of roof accident occurred in the crosscut left off the No. 2 entry, 004 section at Dixie Fuel Company, No. 1 Mine. The accident resulted in fatal injuries to Randall L. Maggard, right side jack setter. Maggard, age 24, had 7 years mining experience, 18 months at this mine. The accident occurred while the Wilcox continuous miner was being pulled back from the face of the No. 1 entry. A previously detected horseback measuring 16 feet long, 10 feet wide, and 3 - 4 feet thick fell without warning, striking Maggard. The cause of the accident was failure to adequately support the roof as required by the approved Roof Control Plan which states crossbars are to be installed in locations where slips are encountered.

**[illegible] MINE ORGANIZATION**

| Company officials: | Name | Address |
|---|---|---|
| 19. President: | Clyde V. Bennett | General Delivery, Grays Knob, KY 40829 |
| 20. Superintendent: | Clarence Parsons | Browning Acres, Harlan, KY 40831 |
| 21. Safety Director: | Wallace Harris, Jr. | Grays Knob, KY 40829 |
| 22. Principle officer—H&S: | Wallace Harris, Jr. | Grays Knob, KY 40829 |
| 23. Labor Organization: | Non-agreement | |
| 24. Chairman—H&S Committee: | N/A | |

Abstract of Investigation

U.S. Department of Labor
Mine Safety and Health Administration

*Authority*—This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164

**Section A—Identification Data**

1. Title of investigation: Fatal Roof Fall
2. Date MSHA investigation started: August 1, 1984
3. Report release date: November 19, 1984
4. Mine: No. 1 Mine
5. Mine ID number: 15-00590
6. Company: Dixie Fuel Company
7. Town, County, State: Cawood, Harlan County, Kentucky
8. Author(s): Ronnie Brock and Lawrence L. Layne

**Section B—Mine Information**

9. Daily production: 500
10. Surface employment: 6
11. Underground employment: 33
12. Name of coalbed: Upper Mason
13. Thickness of coalbed: 30"

**Section C—Last Quarter Injury Frequency Rate (HSAC) for:**

14. Industry: 5.45
15. This operation: 0
16. Training program approved: January 31, 1979
17. Mine Profile Rating: Not currently rated

**Section D—Originating Office**

18. Mine Safety and Health Administration Coal Mine Health and Safety District No.: 7
Address: P.O. Box 572, Barbourville, Kentucky 40906

**Section E—Abstract**

On Wednesday, August 1, 1984, at 12:20 p.m., a roof fall accident occurred in the 2nd lef crosscut off No. 6 room off the 1st right entry (004 working section), at Dixie Fuel Comp No. 1 Mine, resulting in the death of William C. Billings, right-side jacksetter. Billin had six years mining experience and three years experience as a jacksetter. While advanc the 2nd left crosscut, a massive roof fall occurred, trapping four miners who were workin the immediate area. Two miners freed themselves immediately and the continuous miner ope [illegible] freed 40 minutes later with the assistance of fellow workmen. The victim receiv fatal crushing injuries and was recovered five hours and 44 minutes after the roof fall. accident and resulting fatality occurred due to management's failure to detect and adequa support the subnormal roof conditions that were encountered thr out the 004 section.

**Section F—Mine Organization**

| Company officials: | Name | Address |
|---|---|---|
| 19. President: | Clyde Bennett | Gray's Knob, Kentucky 40829 |
| 20. Superintendent: | Clarence Parsons | Gray's Knob, Kentucky 40829 |
| 21. Safety Director: | Wallace Harris | Gray's Knob, Kentucky 40829 |
| 22. Principle officer—H&S: | Wallace Harris | Gray's Knob, Kentucky 40829 |
| 23. Labor Organization: | N/A | |
| 24. Chairman—H&S Committee: | N/A | |

MSHA Form 2000-57, Apr 82 (revised)

U.S. Department of Labor
Mine Safety and Health Administration

*Authority*—This report is based on an investigation made pursuant to the Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164.

**Section A—Identification Data**

1. Title of investigation: Fatal Roof Fall Accident
2. Date MSHA investigation started: November 8, 1984
3. Report release date: February 15, 1985
4. Mine: No. 1 Mine
5. Mine ID number: 15-05423
6. Company: Manalapan Mining Company, Inc.
7. Town, County, State: Highsplint, Harlan County, Kentucky
8. Author(s): Ronnie Brock

**Section B—Mine Information**

9. Daily production: 5,000 tons
10. Surface employment: 3
11. Underground employment: 147
12. Name of coalbed: Harlan
13. Thickness of coalbed: 11 feet

**Section C—Last Quarter Injury Frequency Rate (HSAC) for:**

14. Industry: 5.71
15. This operation: 5.31
16. Training program approved: August 22, 1983
17. Mine Profile Rating: Not currently rated

**Section D—Originating Office**

18. Mine Safety and Health Administration
Coal Mine Health and Safety District No.: 7
Address: P.O. Box 572, Barbourville, KY 40906

**Section E—Abstract**

On Wednesday, November 7, 1984, at approximately 8:15 p.m., a roof fall accident occurred i the No. 3 entry of the No. 10 section, No. 1 Mine, Manalapan Mining Company, Inc., resultin in the death of Tommy A. Middleton, repairman. Middleton had 11 years mining experience, including three years as a repairman. The fatal accident occurred when a large section of roof fell from between the roof bolts as Middleton was walking beside the roof bolting machine. The accident and resultant fatality occurred due to management's failure to detect and properly support the roof in the fall area where the roof bolts were found to be improperly spaced.

**Section F—Mine Organization**

| Company officials: | Name | Address |
|---|---|---|
| 19. President: | Duane Bennett | General Delivery, Brookside, Kentuck |
| 20. Superintendent: | Ralph Napier | Star Rt. #1, Highsplint, Kentucky |
| 21. Safety Director: | | |
| 22. Principle officer—H&S: | | |
| 23. Labor Organization: | N/A | |
| 24. Chairman—H&S Committee: | N/A | |

MSHA Form 2000-57, Apr 82 (revised)

of Fatal Accident

Mine Safety and Health Administration

This form is affected by the Privacy Act of 1974.

1. Fatal Case Number: 30
2. ~~Accident Classification~~: FALL OF RIB
3. Today's Date: 6/05/85
4. District: 7
5. Subdistrict: Barbourville
6. Field Office: Harlan
7. Name of Person Preparing Report: Larry Layne
8. MSHA ~~Person Notified~~: Elmer H. Smith
Date: 6/04/85 Time: Approx. 3:00 p.
9. Notifying Mine Person: Lloyd Canada
10. Telephone Number:
11a. ~~Company/Contractor Name~~: Manalapan Mining Company, Inc.
11b. Parent Company:
12. Mine Name: No. 1 Mine
13. ID Number: 15-05423
14. Primary Mineral Mined: Coal
15. Number of Employees a. Total: 208 b. Underground: 176 c. Open Pit or Quarry: d. Mill: e. Other: 32
16. a. Number of Persons in Mine at Time of Accident: 4 b. Number of Persons Unaccounted for: 0
17. Mine Location a. City: Highsplint b. County: Harlan c. State: Kentucky
18. Date of Accident (month, day, year): 6/04/85
19. Time of Accident (indicate a.m. or p.m.): 2:40 p.m.
20. Date/Time of Death (month, day, year): 6/04/85; 2:40 p.m.
21. Code ~~which best describes~~ where accident occurred.

☒ 01–Underground
☐ 02–Surface at Underground
☐ 03–Open Pit Mine
☐ 06–Dredge Mining
☐ 30–Mill
☐ 99–Office Facilities
☐ Other (specify)

22. Number of Nonfatal Injuries: 0
23. Number of Fatal Injuries or Illnesses (complete additional sheets for multiple fatals): 1
a. Name: Richard Boggs
b. Age: 30
c. SSN (last 4 digits): -7594
d. Regular Job Title: Roof Bolter Operator
e. Job Title When Injured, if different: SAME
24. Mining Experience a. Total: b. With Company: 4 yrs. c. At Mine: 4 yrs. d. On Job: 4 yrs.
25. Autopsy ☒ Yes ☐ No a. Place: Lexington, KY
26. Status of rescue and recovery operations. (Attach separate sheet if necessary)
COMPLETE
27. Description of Accident, include equipment involved and exact location in mine of fatality. (continue on reverse if more space needed)

A fall of the right rib in the second cut of a pillar split in the No. 4 panel room of 004 section resulted in the victim's death. The victim, who was operating a twin-head FMC roof bolting machine, was trapped against the machine by the fall.

— 6/6/85

28. Signature: Carl E. Boone, II Title: Subdistrict Manager Date: 6/05/85

MSHA Form 7000-13, July 82

Mr. SPICER. All of these fatalities had not occurred—I do not know the date that Mr. Helton said I did not defend him—and all of these fatalities had not occurred on that date. That may be immaterial. You see that when we did ascertain that we might have a problem with this family, we took the appropriate action.

The CHAIRMAN. Are you familiar with the Manalpan mine in District 7?

Mr. SPICER. I know the name, Senator. I am not real familiar with the mine.

The CHAIRMAN. Well, Mr. Helton testified that he issued citations against the company owning that mine because the ribs were dangerous.

Mr. SPICER. Because the what?

The CHAIRMAN. The ribs were dangerous in this mine. If you look at the description, the "condition of practice", on page 2.

Mr. SPICER. Yes, sir.

The CHAIRMAN. Well, as I——

Mr. MCMILLAN. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. MCMILLAN. On some of these where Mr. Spicer has not had an opportunity to become familiar with the specifics in the case, would it be acceptable to you that we do get him to go back and review these cases and make a response and submit that back to you?

The CHAIRMAN. Yes, that is fine. We will make it a part of the record.

Well, in any event, Mr. Helton wrote, as I understand, or as he testified, a memo to you about the dangerous conditions at that mine, and I wanted to get a response as to what his, Mr. Spicer's, response to that was.

Mr. SPICER. When this action was taken, it was ten months after I left that district. I realize I still have a responsibility for that district, Senator, as the Administrator. But I did not receive directly a memorandum in 1984; I cannot recollect receiving one earlier than that.

But I can look and see, Senator.

The CHAIRMAN. Well, as I understand it, there was a fatality in that mine just after that as well. I will give you your chance. You can take a look through and give us the best of your recollection.

[Information supplied for the record follows:]

Manalapan

Complete items below for underground only

Number and Types of Underground Openings

A Shafts B Slopes C Drifts

52 Number of Producing

A MMUs 05 B Pits C Augers

53 Name of Coal Bed Harlan

Organization Data

A Corp ☒ B Partnership C Other (specify)

55 Oper Name and Title Duane Bennett Pres.

56 Street or Box Number Gen. Del.

57 City Brookside

58 State Abbr Ky

59 Zip Code 40801

60 Principal Officer for H&S Ralph Napier

61 Street or Box Number Star Rt. I

62 City Highsplint

63 State Abbr Ky

64 Zip Code 40828

For Internal Office Use Only

Mine ID 15 05423

Organization Code 2 0712

Complete items 65 through 81 for Inspections and Investigations Only

65 Action: A New Entry B Update C Delete D Confirm Delete E Retrieve

66 Work Group Identifier 03

67 Activity Code CCA

68 Event Number 5300783

69 Date Event Started 10 17 84

70 Date Event Finished 10 19 84

71 Report Type (check one): A First B Interim C Last D Not Applicable ☒

72 Inspection Dates: From mo da yr To mo da yr

Sun Mon Tue Wed Thu Fri Sat

10/17

73 Daily Production 02000

75 Number of Samples

A Air Samples 0

B Rock Dust Spot 0

C Rock Dust Survey 0

D Respirable Dust 0

E None 0

76 Areas of Inspection

A Company Records Y

B Surface Facility N

C Surface Workings N

D Underground Workings Y

E ATF N

F Dusty Areas Y

G Major Construction N

H Shaft/Slope N

I Impoundments N

J Waste Deposits N

K Other N

L MMU/Pit Number (1) 010-0

77 Inspection Results — Citations, Orders, Safeguards, Other

A This Inspection

(1) New Issuances 06

(2) Terminations/Vacations 03

(3) Modifications/Extensions

B Previously Issued

(4) Left Pending 03

(5) Modifications/Extensions 02 02

(6) Terminations/Vacations 01

78 Is Mine Safety Committee Maintained? Yes No ☒

79 Is there a Designated Representative of Miners? Yes No ☒

80 Independent Contractor Codes

81 103(i) Classification

A. Current Status: In 103(i) ☐ (check one) Not in 103(i) ☒

B. Applicable 103(i) Code

C. Date Entered Current 103(i) Status

This report is based on an inspection made under the Federal Mine Safety and Health Act of 1977

Signature of Authorized Representative who is Responsible for Inspection/Investigation

Paul D. Helton

AR Number 20436

MSHA Form 2000-122 July 81 (Revised) (Previous editions are obsolete)

Mine Citation/Order

**U.S. Department of Labor**
Mine Safety and Health Administration

**Section I—Violation Data**

1. Type of issuance (check one) Citation ☐ Order ☐ Safeguard ☐
2. Date [illegible] Mo 7 Da [illegible] Yr
3. Time (24 hr. clock) 1000
4. Citation/Order Number 2474719

5. Served To [illegible]
6. Operator [illegible]
7. Mine [illegible]
8. Mine ID [illegible] (Contractor)

9. Type of Action [illegible]
10. Violation A. Health ☐ Safety ☐ Other ☐ B. Section of Act C. Part/Section of Title 30 CFR [illegible]
11a. Significant and Substantial (see reverse) ☐
11b. Written Notice ☐

12. Condition or Practice

[illegible] excavated [illegible] and [illegible] was observed [illegible] for the [illegible]

13. Area or Equipment

[illegible]

14. Initial Action: Citation ☐ Order ☐ Safeguard ☐ Written Notice ☐
15. Citation/Order Number
16. Dated Mo Da Yr
17. Termination Due A. Date [illegible] Mo Da Yr B. Time (24 hr clock) C. Signature [illegible] D. AR Number [illegible]
☐ See continuation form (MSHA Form 7000-3a)

**Section II—Termination Action**

18. Action to Terminate

[illegible]

19. Terminated Mo Da Yr B. Time (24 hr. clock) C. Signature [illegible] D. AR Number

**Section III—**

20. Negligence (check one) A. None ☐ B. Low ☐ C. Moderate ☐ D. High ☐ E. Reckless Disregard ☐

21. Gravity
A. The occurrence of the event against which the cited standard is directed was
No Likelihood ☐ Unlikely ☐ Reasonably Likely ☐ Highly Likely ☐ Occurred ☐
B. The injury resulting from or contemplated by the occurrence of the event could reasonably be expected to be:
No lost workdays ☐ Lost workdays or restricted duty ☐ Permanently Disabling ☐ Fatal ☐
C. Number of persons who would be affected if the event occurred or were to occur [illegible]

22. Good Faith
A. Failure to abate within the time period given ☐
B. Signature
C. AR Number

**Section IV—Automated System Data**

23. Type of Inspection (activity code)
24. Event Number
25. Primary or Mill

MSHA Form 7000-3, Apr 82, (revised)

Mr. SPICER. Thank you.

The CHAIRMAN. Let us go to Berger No. 2 Mine. That mine was in your district, was it not?

Mr. SPICER. Yes, sir. It is in the district that I was manager in.

The CHAIRMAN. It was in your district?

Mr. SPICER. It was in my district; that was in the district I left. I was Deputy Administrator when that fatality occurred.

The CHAIRMAN. Okay. Mr. Helton said he issued citations and closure orders at the mine and that he was then taken off the inspection. Do you know whether you took him off the inspection?

Mr. SPICER. I did not, Senator. I would have to see if anybody did.

The CHAIRMAN. There is a vote on, and I will have to recess for five minutes.

[Recess.]

Senator METZENBAUM [presiding]. The Committee will come to order.

The Chair has not been here for the entire meeting because I was chairing another meeting having to do with the Fuel Use Act.

At this time, I will put into the record my entire statement and ask that it be printed immediately following the Chairman's statement.

I have some questions for Mr. Spicer and Mr. Bernard.

Last September, at the first oversight hearing on MSHA, the General Accounting Office reported to this Committee the interim results of its investigation of MSHA, an investigation undertaken at my request beginning in 1985.

After that hearing, I asked the GAO to continue examining the problem of underreporting of injuries and the impact of MSHA penalties on this problem.

The GAO's continuing investigation has produced what I believe are dramatic results. I would like to discuss the results of GAO's continuing investigation with MSHA administrators here today.

First, let me review GAO's findings regarding the impact of MSHA's penalties. The GAO found that for 1986, the average penalty assessed for failure to report injuries was only $27 per violation—that is unbelievable—$27 per violation—and a mere $94 per mine. That is hardly more than a good tip at the Stork Club—$94 per mine.

The largest fine assessed to a mine was less than $3,000. Total fines for the year for underreporting injuries in 17,000 mines nationwide were only $31,000. That is a farce. It is an absurdity.

That paltry amount compares to fines in the hundreds of thousands of dollars assessed by OSHA in 1986 against individual companies for recordkeeping violations.

In addition to gathering this data, GAO surveyed the participants in the system as to the impact of the MSHA penalty structure. One hundred percent of the labor organizations, 45 percent of the organizations representing mining operators, stated their belief that current MSHA fines do not deter underreporting of injuries.

In short, the current system is totally ineffective, and much higher fines, especially for repeat offenders, are warranted.

Given the weight of this evidence, can you as MSHA administrators honestly maintain that the MSHA penalty structure deters underreporting of injuries? Whichever one of you cares to respond——

Mr. McMILLAN. Senator, with your indulgence, could I perhaps preempt Mr. Bernard and Mr. Spicer and respond to you? I am Alan McMillan, the Acting Assistant Secretary, and I have taken a look at your concerns in just the few weeks that I have been at MSHA. And I guess at the beginning, I have to say that I agree with a lot of your concerns. I come to this agency from 15 years at OSHA.

Some changes were made by the Secretary as it relates to both OSHA and MSHA on the issue of recordkeeping a few years ago. It started out on the OSHA side and then, looking at the MSHA side, also some changes were initiated in 1986.

You are absolutely correct that prior to that, the penalties for underreporting—no one could call them a deterrent or adequate in any sense. Some changes were made. For example, every individual instance started being cited, rather than grouping them together.

Unfortunately, I have to tell you today that after doing a quick review of the results of those changes in just the last year, that jumped the average penalty per mine from, as you said, somewhere in the twenties to still less than one hundred dollars per mine. And again, I think the fair question is did we do enough. And I think the answer to that is no, we have not done enough.

I would say to you that from what I can tell to date, what we have got to do a better job of in MSHA is take a look at how we are looking at the underreporting issue on a case-by-case basis, in particular how it relates to the inspectors and their supervisors assessing the negligence factor on a lot of these violations.

For instance, we just issued three violations for failure to report lost time accidents at a major mine within the last two weeks, and I assure you that if our activities are correct and upheld by the Commission, that those penalties will be far in excess of what you have seen and what we have seen in the past.

But the reason we can assess higher penalties is because we were able to say that in these cases, we felt that we had the highest level of willful disregard for proper accident/injury reporting. And by assigning a high level of negligence and then asking for a special assessment, we can in fact, I believe, within the current system, bring about penalties for these really egregious nonreporting instances that are going to act as a deterrent.

Senator METZENBAUM. That will only occur if the leadership provides the direction. And so far, it has been a terrible, unbelievable letdown.

And I have to ask Mr. Spicer and Mr. Bernard, how do you explain it? How do you explain years of neglect on your watch? What the devil were you doing? How could you possibly not understand $27 fines, $3,000 maximum? What is your answer?

Mr. Spicer?

Mr. SPICER. Senator, to start with, where we found violations, we did write the citations. Again, as Mr. McMillan said, the only way they can be assessed at a higher amount is to assign a higher negligence because these are not health and safety violations, but are recordkeeping violations, in most cases. And apparently, we have not taken a hard enough view in the minds of this Committee——

Senator METZENBAUM. Do you think you took a hard enough view, in retrospect?

Mr. SPICER. In using hindsight, I think we have not taken a hard enough view.

Senator METZENBAUM. Pardon?

Mr. SPICER. Hindsight tells me no.

Senator METZENBAUM. How about you, Mr. Bernard?

Mr. BERNARD. In looking at the violations and recordkeeping for the last several years, I will have to agree that we have not taken a hard enough view, and we could have used the negligence factor to increase the fines somewhat.

Senator METZENBAUM. I have not concluded, but Senator Simon has just some very brief questions, as I understand, and I do not have any objection to yielding to him.

Senator SIMON. And I thank my colleague—not a question. Let me just say—and I really regret, because I am very much interested in this, that conflicts are keeping me away—but the overall impression, Mr. Spicer, as you said, what the feeling of this Committee is, I think it is fair to say the overall impression of this Committee is that there has been foot-dragging on enforcement of safety in the mines. And I would underscore that and put an exclamation point there. And anything that you can do to put some backbone in that enforcement, I think, is what we want.

I would add that one of the next witnesses is Richard Trumka, the President of United Mine Workers. I am going to read his testimony with great interest. He is one of the finest leaders we have in this nation, and I will be interested in seeing what he has to say.

But clearly, we want to see some action. And I am interested, Mr. Chairman, six months from now, in taking another look at this thing and seeing where we are and seeing if we do not have this thing beefed up a little more.

Thank you.

Senator METZENBAUM. The continuing GAO investigation also uncovered a dramatic disparity in injury reporting between small mines, those employing fewer than 50 workers, and large mines. The GAO figures are startling. Small mines employ only 5 percent of the mine work force but accounted for almost half of all mine fatalities. This high fatality rate compares to an unbelievably low rate of reported injuries. Small mines on average reported only three injuries for every fatality, whereas large mines reported 51 injuries for every fatality, which is 17 times the injury report rate of small mines.

In addition, operators of two out of five small mines where a miner was killed over a four-year period claim they never experienced a single injury during that same time period.

Is that really believable? By contrast, less than one percent of the large mines reported such a pattern. Small mine operators can attempt to rationalize this data, but the numbers speak for themselves. Small mine operators are ignoring their legal requirements by significantly underreporting injuries in the mines. That is the problem of the small mine operators.

But our problem is your failure to do anything about it. There has been such an unbelievable failure to accept your statutory responsibilities that I say to myself, what makes these people tick?

Why would they not move in and protect the lives of working people? It is about time that MSHA took some aggressive action to rein in the small operators who are blatantly ignoring their legal reporting requirements.

And I guess my question is—it is one thing for us to have a hearing, but the bottom line is, what action do you intend to take to enforce the MSHA reporting requirements for small mines? Mr. McMillan, this may be another one that you want to pick up.

Mr. McMillan. Thank you, Senator, and we are going to take some actions. We are going to try to issue what we think is going to be a good clarification to our policy on citing and assessing penalties for failure to properly report lost time injuries as well as fatalities.

I think as you already noted, the bigger problem seems to be the failure to report the injuries. I cannot attest to what we did in the past as far as thoroughness in small mines. I would agree, though, that the GAO data, the preliminary data from them, makes it appear that we have not followed up with the small mines on their reporting of lost time injuries.

I can assure you that in the clarification we will issue to our district managers down to our inspectors will be that not only will we start taking a strong, hard look at the accident and injury reporting systems in small mines, but where we do find willful failure to report, that we will deal with that with the strongest penalty provisions that we can bring to bear.

Senator Metzenbaum. Let me say this GAO report is so disturbing because you think that government people are going to do the responsibilities that we give them by statute. And then, when they let people down, it causes you to lose confidence in the people and the system, and why it has broken down.

This GAO report will be on the table in this room, and you are welcome to look at it. But I will say to you, Mr. Chairman, that I want to commend you for holding these two hearings. My failure to be here only came about by reason of some conflicts with other committee hearings.

But I believe that the responsibilities in this area have been so remiss, and the penalties and the price paid by so many, as indicated by the evidence yesterday, is so traumatic, so terrible and so devastating that if, in order to get some action out of this crowd, we ought to have hearings every two months, every three months, every four months, whatever, I will join with you, because I do not know how to get any action out of them except just to expose their failure to act to the public light as you are doing in this hearing.

Thank you.

The Chairman. Well, thank you very much, Senator Metzenbaum, Senator Simon. I think, Mr. McMillan, you get some sense about the seriousness with which this Committee has approached this subject, and it certainly has been reflected in our Republican friends as well.

So I want to say, Mr. Spicer, that we wanted to go through the remaining statements and comments and testimony, but we are running into time problems for our next panels of witnesses. I must say that in going through that testimony earlier this morning, I find that it seems your memory is quite good in the areas where you have some defense, but it has mercifully failed in the areas where you failed to enforce the law.

Now, I am going to submit some additional questions, and you will have an opportunity to add whatever material you wish for the record, based upon other testimony, and I will submit questions to the other members of the panel based upon the testimony, and we will make those statements and comments a matter of the record as well.

Mr. McMillan, I want to thank you for coming here. As you gather information, we want to work with you, but we are dead serious about this issue, and we are not going to let it go, not as long as I am Chairman, and we will not let it go even if I was not Chairman. We are going to follow this right down the line, and we are going to get, as we have indicated, I think, a fresh start in this area. But I think there has to be some housecleaning and serious housecleaning, and we are going to work with you and the Secretary.

I am going to call the Secretary this afternoon and at least give him my impressions about what the problems are. We want to work with him; we are working with him in a number of different areas, and we know that he is committed in terms of safety and health issues. We want to have his personal involvement in this whole question.

So we will excuse the panel. We will submit some additional questions, and any additional material that the members of the panel want to provide for the record, we will make a part of the record.

Thank you very much.

Mr. McMillan. Thank you very much, Mr. Chairman.

[Additional information supplied follows:]

## SUBJECT

Evaluation Report of Coal Mine Safety and Health Ventilation Enforcement Program prepared by the Division of Safety.

## DISCUSSION

In late 1983, the Division of Safety submitted to the Administrator of Coal Mine Safety and Health its evaluation of MSHA's ventilation enforcement program. The report was based on audits of 75 mine ventilation and methane and dust control plans submitted to MSHA's district offices, as well as on interviews with field inspection personnel, supervisors, and ventilation and health technical specialists. It should be distinguished from a ventilation survey done of an individual mine which is conducted on-site to review actual ventilation conditions and practices at the mine.

Although the report was never formally published by the Agency because of concerns that certain of the report's findings were not adequately supported, much valuable information from it was disseminated both inside and outside MSHA. The report was distributed to all ten coal mine safety and health districts for comment and discussion. Moreover, meetings were held by MSHA with UMWA and industry representatives to discuss the contents of the report, including the need for improvements in the substance of plans submitted and in the ventilation of pillared and abandoned areas.

It is my understanding that in addition to holding discussions on the audit MSHA also initiated specific activities which addressed the report's conclusions. For example, in response to the report's conclusion that sufficient emphasis had not been placed on the procedures for ventilation plan review or the contents of plans, MSHA has placed a high priority on improving both the approval process and the substance of plans. Each district has established a program, based on headquarters guidance, which sets out the procedures for review of ventilation plans submitted by mine operators. Among other things, the program specifies that headquarters staff will periodically conduct on-site evaluations of the ventilation plan approval process. Headquarters staff began conducting these audits in 1985.

To address the substance of the ventilation plans, MSHA reestablished its practice of holding meetings for field ventilation supervisors and headquarters specialists. These forums, held typically two to four times annually, are conducted so the persons who are intimately involved in determining the merit of plans submitted for approval may communicate directly to each other and headquarters experts about innovative approaches, changing technology, and the resolution of common problems. In these meetings, the supervisors of plan approval staffs are also exposed to national accident and injury data and trends, as well as recent enforcement and engineering experiences. In addition, MSHA conducts 2-week retraining sessions for field ventilation specialists (personnel who conduct underground investigations and inspections). The most recent retraining is being held April 7-16.

Another of the report's conclusions was that the inspectors' training was lacking in some areas of the ventilation system and methane and dust control enforcement program. Training for the inspectorate has undergone many changes since 1983 following the release of a report on the quality of inspector training by the Coal Mine Safety and Health Training Committee. At the GS-9 entry level, inspectors receive 12 weeks of classroom training at the National Mine Health and Safety Academy (Academy) and 12 weeks of on-the-job training. The classroom training on ventilation is 47 hours in length and covers such topics as the ventilation standards; preshift and on-shift examinations; face ventilation; bleeders, air quality, velocity, and readings; testing for methane and methane controls; ventilation plans and mine maps, and mine fans, auxiliary fans, and ventilation controls. The GS-9 inspector's on-the-job training assignments are specifically tailored by a journeyman inspector to reinforce classroom work and the journeyman inspector closely monitors the new inspector's progress.

GS-11 inspectors receive 6 weeks of advanced training at the Academy which builds on work experience and prior training. Journeymen-level inspectors attend 2 weeks of training every 3 years at the Academy.

SUBJECT

Special Investigations.

DISCUSSION

At the outset, I want to emphasize my commitment to the Agency's special investigation program and dispel any impression of past nonsupport for this important function. Enforcement of the Mine Act's Section 110 provisions is a critical element of MSHA's effort to ensure compliance with the Act and our safety and health standards which deserves to be accorded a high priority.

One of my first actions upon coming to MSHA reflects the importance I give to this area. Because of concerns raised regarding the process for referral of cases for possible criminal prosecution, I reviewed the matter and, after consideration, issued a memorandum restating MSHA's procedures for referring a possible criminal violation of the Mine Act to the Department of Justice. This memorandum supercedes instructions issued in March 1986.

In addition, a task force has recently been appointed to evaluate the special investigations function to identify any existing inconsistencies in the organizational or reporting structure and provide recommendations for improvement. That group commenced its work on April 8, 1987, and includes representation from our field special investigative staffs, Messrs. Allan Howell and Michael Finnie, both of whom testified before your Committee.

As far as Coal Mine Safety and Health's activity in the criminal area is concerned, from FY '81 through FY '86, 58 cases were referred to U.S. Attorneys or the Department of Justice. Twenty-eight of those cases resulted in successful criminal prosecutions. Eleven of the cases referred remain pending and 19 cases have been declined for prosecution.

Twenty-five of the 58 referrals were referred out of Norton, Virginia, District 5, with 14 of those cases resulting in successful prosecutions. Two cases referred by District 5 remain pending and the 9 others were declined for prosecution. This, in my opinion, constitutes an excellent record overall, particularly in District 5.

Of the five special investigators in the District 5 unit for most of this period, three of them remain in the District performing special investigation functions. Mr. Goode has been assigned to the Office of Technical Compliance and Investigations in headquarters. Mr. Allan Howell applied for and was promoted, as of January 1985, to a supervisory position. He currently serves as the Senior Special Investigator for District 10 in Madisonville, Kentucky.

**U.S. Department of Labor**

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, VA 22203 -1984

APR 14 1987

MEMORANDUM TO ALAN C. McMILLAN

FROM: RICHARD L. BRECHBIEL R L Brechbiel

SUBJECT: Allegations from Oversight Hearings Regarding Mr. Michael Finnie

There are two issues regarding Mr. Finnie that were mentioned during the testimony at the Senate Oversight Hearings on March 11, 1987. The first involved a nomination for Special Investigator of the Year and the second concerned a Satisfactory Performance Rating he received for the period April 9, 1986 - September 15, 1986. Based on your request, I have completed a comprehensive review of both issues and am submitting the following findings.

ISSUE 1: Did Assistant Secretary Zegeer influence, in any manner, the action to not submit Mr. Finnie's nomination in the "Special Investigator of the Year" category from the National Association of Federal Investigators?

The following is a chronological review of the documentation/ interview findings:

1. May 12, 1986, letter to David A. Zegeer from John Martin, President of National Association of Federal Investigators (NAFI), dated 5/8/86, soliciting nominations for the award was received.

2. May 18, 1986, the Martin letter sent to Marge Burton, Director of Administration and Management, from David Zegeer for action and note from David Zegeer asking for any suggestions.

3. May 19, 1986, the Martin letter sent to the Human Resources Division (HRD) for action with a due date of 07/11/86. Deadline for nominations to NAFI was 07/15/86.

4. June 19, 1986, a Personnel Information Bulletin, No. 86-40 was issued to Principal Officials Nationwide soliciting nominations with a due date of 07/03/86. Nominations were to be submitted to Human Resources Division.

5. Dennis Ryan received a copy of a draft nomination for Michael Finnie, from Pat Early, Administrative Officer, District 8, sometime after 06/19/86. He had it reviewed and comments were telephoned to District 8.

6. July 2, 1986, Maurice Childers submitted the revised nomination to the Human Resources Division via Express Mail Overnight Delivery.

7. July 3, 1986, nomination was received by HRD from Mr. Childers.

8. July 16, 1986, A transmittal letter was written to John Martin, President, NAFI submitting nomination of Michael Finnie. This letter was for Mr. Zegeer's signature. Awards of this nature are required to be approved by MSHA's Executive Resources Board (ERB). The ERB meets periodically to review executive training, awards and pay deciding issues.

9. July 22, 1986, letter was surnamed by a HRD staff member and forwarded through the chain of command to ERB. It was also signed by Jerry Spicer as member of ERB on this date. The nomination was past the July 15, 1986 deadline at this time.

10. July 23, 1986, letter was given to Aurel Goodwin for surname as ERB member and then forwarded to Chairman of ERB, Tom Shepich.

11. July 24, 1986, Mr. Shepich returned the action to Jerry Spicer/Joe Lamonica. Mr. Shepich questioned both the timeliness of the submission and the fact that Mr. Lamonica had not surnamed the nomination.

12. On approximately July 25, 1986, Joe Lamonica, who had not signed the nomination, asked Dennis Ryan to check if the award could still be submitted since it was now approximately 1 1/2 weeks past the deadline, and if it could, should it go forward. Dennis Ryan called Dick Ross, OIG, who is on the Board of NAFI and was told no nominations would be considered at that date.

13. August 21, 1986, Dennis Ryan sent a letter to Maurice Childers explaining that the nomination was not processed in time to meet the deadline of NAFI. The transmittal memorandum was returned to the Human Resources Division.

There is no evidence to indicate that Mr. Zegeer was involved in, or even aware of any part of the nomination for Michael Finnie. None of the individuals involved in the process had any conversations with Mr. Zegeer regarding Mr. Finnie. The documentation indicates that the sole reason that Mr. Finnie's nomination was not processed, was timeliness. Initially the request for nominations did not go out until 30 days after the receipt of John Martin's letter and secondly, the nomination was not forwarded for ERB approval until 7 days after the NAFI deadline.

Issue 2: Did Assistant Secretary Zegeer influence in any manner Mr. Finnie's Performance Appraisal Rating?

The following is a chronological review of the documentation/ interview findings:

1. December 12, 1982, M. Finnie transferred to District 8 from District 6.
2. November 29, 1983, he was rated as highly effective for period 3/14/83-11/28/83. No Bonus Paid
3. September 27, 1984, he was rated as highly effective for the period 12/29/83-10/15/84 and received a bonus.
4. October 2, 1985, he was rated highly effective for the period of 10/01/84-09/30/85 and received a bonus for his performance. While none of his standards specifically mentioned the investigation at Eagle No. 2 Mine, Peabody Coal Company, his effort was recognized in his appraisal for this period. This was reflected under Other Significant Accomplishments During the Period. "Assisted U.S. Attorney's office by serving Grand Jury subpoenas, preparing witnesses, gathered additional witness statements, and served as MSHA's representative in determining the course of action to be taken by the U.S. Attorney's Office in the case."
5. Approximately 10/01/85, M. Finnie was reassigned to a non-supervisory, non-merit pay position due to a field reorganization in both District 3, Morgantown, West Virginia and District 8, Vincennes, Indiana. He was not under standards until 04/09/86.

6. September 17, 1986, he was rated satisfactory for the period 04/09/86-09/15/86. As he was not in merit pay at this time he was not eligible for a bonus. In addition, this appraisal covered a period of time after the Eagle No. 2 Mine, Peabody Coal Company case was completed.

7. In late 1986, he was reassigned supervisor duties and placed back in a merit pay position. He is currently under standards put in place effective 12/09/86.

A review of the Eagle No. 2, Peabody Coal Company action indicates that MSHA began its investigation on January 10, 1983. The investigation was completed on September 21, 1983. On February 22, 1984, the case was referred to the U.S. Attorney. Grand Jury proceedings were begun and indictments were handed down in November 1985. As indicated, Mr. Finnie received credit for working on this investigation when he was assigned a Highly Effective Rating and received a bonus for the Period October 1, 1984 - September 30, 1985. The active part of the investigation was completed prior to his FY 86 standards being in place when he was rated satisfactory. In addition, there is no evidence that Mr. Zegeer had any knowledge of or involvement in any part of this rating review.

SUBJECT

What efforts did MSHA make to ensure that the M&W Coal Company was subject to the jurisdiction of the Federal Mine Safety and Health Act?

DISCUSSION

The Department of Labor believes that all mines in the United States are covered by the Federal Mine Safety and Health Act of 1977. MSHA, together with its legal staff, has successfully pursued injunctive action to gain access to inspect the M&W Coal Company mine in Tennessee. M&W Coal Company was an illegal mine whose operator had not complied with regulatory requirements to file a Legal Identity Form in order to receive a Mine I.D. number. The operator further refused MSHA entry to the mine to inspect the mining operation.

Traditionally, injunctive actions against illegal mines are difficult to prove because they must be based on an exhaustive factual investigative record. Once an illegal mine is discovered, the record must reflect with certainty the identity of the operator and the fact that the mine affects interstate commerce. Frequently, the investigation to develop the facts necessary to bring a case (like the M&W case) is made in the fact of serious obstacles such as nighttime observation of suspected mine sites, following "paper-trails" to identify operators, and overcoming physical deterrents such as locked chains across roads or the threat of physical harm to inspectors. Nevertheless, MSHA has successfully pursued injunctive cases against many illegal operations. In the M&W case, three lawsuits were filed before MSHA could successfully inspect the mining operations.

In 1977 the first case, Secretary of the Interior v. Buck Layne was brought to gain a right of entry to inspect the mine under the Federal Coal Mine Health and Safety Act of 1969. This case was dismissed by the District Court because the Secretary of the Interior failed to establish that products of the mine entered or affected interstate commerce, and because the Secretary failed to establish that Buck Layne was the operator of the mine. The order of dismissal was entered December 27, 1977. A copy of this order is attached as Exhibit A.

A second lawsuit, Marshall v. B&J Coal Mining and Leasing Co., Inc., was also dismissed by the District Court in September 1978 for failure to establish subject matter jurisdiction. The dismissal was based on a legal technicality because the Secretary of Labor apparently failed to allege that the products of the mine entered or affected interstate commerce. A copy of this order is attached as Exhibit B. Neither Buck Layne nor B&J Coal Mine Leasing was appealed because more factual evidence was needed to prevail in court.

Attempts by MSHA to investigate a reported fatality and inspect the mine in October 1983 were rebuffed by the mine operator. A discrimination complaint filed in October 1983 with MSHA helped to provide the necessary facts to file the third injunction complaint, *Donovan* v. *M&W Coal Co., Inc., et al.*, on November 30, 1983. Sufficient information as to key people, addresses, payroll information and the destination of coal shipped was thus available. In the *M&W* case, the District Court permanently enjoined the coal company from denying the Secretary of Labor or his authorized representative access to the mine, and the Court enjoined the company from refusing to permit inspection of the coal mine operation. This permanent injunction was entered on December 5, 1983. Since the injunction was ordered, the mine has been subject to MSHA inspection. A copy of this order is attached as Exhibit [illegible].

A memorandum written on October 12, 1983, cited Mr. Jerry Spicer (then the District Manager in Barbourville) as issuing instructions to stay away from the M&W mine. Because of the adverse legal proceedings previously described and on the advice of counsel, Mr. Spicer had instructed the inspectors of the subdistrict not to attempt to inspect the M&W operation. Mr. Spicer was aware that legal action was being initiated as indicated by his handwritten note on the October 12 memorandum. A copy of this memorandum is attached as Exhibit D.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE,
SOUTHERN DIVISION

DEC [illegible]

[illegible] S. KLEPPE, Secretary of the [illegible]r, United States Department of [illegible]rior,

Plaintiff,

- vs. -

BUCK LAYNE, JR., Trading and Doing Business as M & B Coal Co., Nos. 1 and 2 Mines,

Defendant.

Filed ___ day of ___
[illegible] Order Book [illegible]
Karl D. Saulpaw, Jr., Clerk
By ___ Dep. Clerk

CIV-1-76-250

## JUDGMENT

This is an action brought pursuant to the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §§ 801 et seq. The case having been tried before the Court sitting without jury and the Court having entered its findings of fact and conclusions of law, this judgment is entered in accordance therewith.

It is accordingly ORDERED that this lawsuit be and the same is hereby dismissed.

APPROVED FOR ENTRY.

Frank W Wilson
United States District Judge

ATTEST:
A true copy. DEC 27 1977
Certified to: ___
Karl D. Saulpaw, Jr., Clerk
By ___
Deputy

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12-27-77 - cc: Dept. of the Interior, Arlington, VA
Attention: Mr. Fred Moncrief

M. Kirksey

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE,
SOUTHERN DIVISION

FILED

S. KLEPPE, Secretary of
erior, United States
ent of the Interior,

Plaintiff,

- vs. -

BUCK LAYNE, JR., Trading and
Doing Business as M & B Coal
Co., Nos. 1 and 2 Mines,

Defendant.

CIV-1-76-250

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This lawsuit arises under the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. §§ 801 et seq. The plaintiff seeks an injunctive order requiring the defendant to permit the inspection of certain coal mines alleged to have been operated by the defendant. A hearing upon a motion for a preliminary injunction was held in the case and the motion was denied, the plaintiff having failed to show any evidence on the jurisdictional issue of whether the products of the subject mine had entered commerce (Court File #5). Thereupon the case came on for trial before the Court sitting without a jury. The Court now enters the following findings of fact and conclusions of law upon the total record made in the course of the trial.

## Findings of Fact

(1) The plaintiff, Thomas S. Kleppe, is the Secretary of the Interior for the United States Department of the Interior and as such is charged with the administration of the Federal Coal Mine Health and Safety Act of 1969.

(2) The defendant, Buck Layne, Jr., is a citizen and resident of Whitwell, Sequatchie County, Tennessee, and over a period of years has engaged in activities related to the coal industry.

(3) On September 30, 1976, authorized representatives of the plaintiff went to the vicinity of the two underground

ATTEST: DEC 27 1977
A True Copy
Certified this

mines located in Marion County, Tennessee, for the purpose of conducting inspections of the said mines to determine whether [illegible] being operated in compliance with the Federal Coal Mine Health and Safety Act. Upon this occasion one William Crabtree, who was at the mine premises, denied permission for the plaintiff's representatives to inspect the mines. One of the plaintiff's representatives, who was present at the mine site on this occasion, also testified that after leaving the mine he met the plaintiff, Buck Layne, Jr., the defendant in this case, and Layne stated that he agreed with Crabtree's action in refusing permission to inspect the mines.

(4) As to the interest, if any, that Buck Layne may have had in the subject mines at the time that their inspection was denied, it appears that at some date previous to August of 1976 he purchased mineral rights from Tennessee Consolidated Coal Company in certain lands. On August 27, 1976, he leased a coal mine and coal mining equipment unto B & J Coal Mining and Leasing Company, Inc., a corporation wholly owned by his wife (Ex. #7). The lease purported to restrict any coal mining operation under the lease to intrastate sales only. Under an undated sublease, which also appears to have been executed in August of 1976, B & J Coal Mining and Leasing Company, Inc., subleased the coal mine unto William Crabtree (Ex. #8). The sublease likewise purported to restrict any coal mining operations under the lease to intrastate sales only. Although the evidence is quite unclear as to whether the coal mine that was the subject of the foregoing lease and sublease was one of the mines that is the subject of this litigation, it would appear that it was. It would further appear that William Crabtree was the operator of that mine under the above referred to sublease. The evidence fails to identify the second mine referred to in the litigation, whether it was in existence, and, if so, whether it was in operation or who operated it. There appears to be some evidence in the record that William Crabtree may have operated two mines, but

[illegible] this is true or not the Court simply cannot ascertain [illegible] the trial record. In this connection it is appropriate to [illegible] out that much of the evidence presented upon the trial in this case was confused to the point of almost total incoherence as it purported to relate to allegations in the complaint.

(5) The preponderance of the evidence would appear to support the conclusion that as of September 30, 1976, and with reference to the mines referred to in the complaint, William Crabtree was the operator of the one mine shown to have been in operation on that date. The evidence further preponderates in favor of a finding that the coal produced at this mine was delivered by Crabtree to the mine tipple, where it was all sold to the B & J Coal Mining & Leasing Company, Inc., the corporation owned by the defendant's wife and managed by the defendant. Of the coal thus purchased from Crabtree, it appears that an unspecified amount of this coal was sold to one Bobby Wiggins, a person otherwise unidentified in the record, that in the period between August 1976 and August 1977 a total of $266,905.30 was received from coal sold to local and intrastate customers and that 14,500 tons of the coal produced by Crabtree currently remains stockpiled and unsold.

(6) It appears that at some unspecified date or dates subsequent to 1970 the defendant, Buck Layne, had sold a total of 20,550 tons of coal to the Tennessee Consolidated Coal Company, which coal was in turn exported to Japan. The source from which Buck Layne acquired this coal remains unidentified in the record.

## Conclusions of Law

(1) Although the Court would have jurisdiction of the parties in this lawsuit, an issue exists as to whether the Court would have jurisdiction of the subject matter of the lawsuit. This action was brought pursuant to Section 818, Title 30 U.S.C. That section authorizes the Secretary to institute a civil action in the district court for purposes of obtaining a permanent or temporary injunction, restraining order, or other appropriate

order, whenever a mine operator or his agent refuses to admit representatives of the Secretary to the mine or refuses to permit an inspection of the mine. Section 803 of Title 30 further defines a mine to which the Act is applicable as follows:

> "Each coal mine, the products of which enters commerce, or the operations or products of which affect commerce, and each operator of such mine, and every miner in such mine shall be subject to the provisions of this chapter."

The plaintiff having failed to establish that the products of the mine or mines involved in this lawsuit entered or affected interstate commerce, the Court would be without jurisdiction over the subject matter of the lawsuit.

(2) Apart from or in addition to the jurisdictional deficiency in the proof in this lawsuit, the evidence fails to establish that the defendant, Buck Layne, Jr., was the "operator" or "agent . . . charged with . . . the operation" of the mine or mines that are subjects of this lawsuit. The terms "operator" and "agent" are defined in Section 802(d) and (e) of Title 30 U.S.C. as follows:

> (d) "Operator" means any owner, lessee or other person who operates, controls, or supervises a coal mine.
>
> (e) "Agent" means any person charged with responsibility for the operation of all or any part of a coal mine or the supervision of the miners in a coal mine.

The evidence having failed to establish that Buck Layne either operated, controlled or supervised the subject coal mines or was charged with the responsibility for the operation of the said coal mines, this lawsuit must stand dismissed as to the said defendant.

An order will enter accordingly.

Frank W. Wilson
United States District Judge

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE,
SOUTHERN DIVISION

FILED
SEP 29 1978
KARL D. SAULPAW, JR.
Clerk
By
Dep. Clk.

RAY MARSHALL, Secretary of
Labor, United States Department of Labor,
Plaintiff,

- vs. - CIV-1-78-74

B & J COAL MINING & LEASING
CO., INC.,
Defendant.

## O R D E R

This is an action brought pursuant to the Federal Mine Safety & Health Act of 1977, 30 U.S.C. §§ 801 et seq., in which the plaintiff seeks an injunctive order requiring the defendant to permit the inspection of certain coal mines alleged to have been operated by the defendant. The case is presently before the Court upon certain motions, including the defendant's motion to dismiss. This order is entered in accordance with the Court's memorandum upon the pending motions.

It is accordingly ORDERED that this lawsuit be and the same is hereby dismissed for failure of the complaint to allege subject matter jurisdiction.

APPROVED FOR ENTRY.

United States District Judge

ATTEST:
A true copy.
Certified this SEP 29 1978
KARL D. SAULPAW, JR., CLERK
By

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE,
SOUTHERN DIVISION

FILED
SEP 29 1978

RAY MARSHALL, Secretary of Labor, United States Department of Labor,
Plaintiff,

-vs. -

B & J COAL MINING & LEASING CO., INC.,
Defendant.

CIV-1-78-74

## MEMORANDUM

This is an action brought pursuant to the Federal Mine Safety & Health Act of 1977, 30 U.S.C.A. §§ 801 et seq., in which the plaintiff seeks an injunctive order requiring the defendant to permit inspection of certain coal mines alleged to have been operated by the defendant. The case is presently before the Court upon the defendant's motion to dismiss or in the alternative for summary judgment (Court File #18) and upon the defendant's motion to strike a certain counteraffidavit filed by the plaintiff in opposition to the defendant's motion for summary judgment (Court File #22).

Turning first to the defendant's motion to dismiss, the motion is predicated upon two contentions: (1) that the complaint fails to contain allegations sufficient to confer subject matter jurisdiction over the lawsuit; and (2) that the provisions of the statute relied upon as authorizing inspections of coal mines, 30 U.S.C. § 803, are violative of the search and seizure provisions of the Fourth Amendment to the United States Constitution.

With regard to the sufficiency of the jurisdiction allegations in the complaint, the defendant asserts that the plaintiff fails to allege "a nexus with interstate commerce" and therefore that the Court lacks subject matter jurisdiction. Rule 8(a) of the FEDERAL RULES OF CIVIL PROCEDURE provides that every complaint shall contain a "short and plain statement of the grounds upon which the court's jurisdiction depends. . . ." The present action purports to be brought pursuant to 30 U.S.C.A. §§ 801 et seq.

Section 803 of that statute provides:

> "Each coal mine, the products of which enter commerce, or the operations or products of which affect commerce, and each operation of such mine, and every miner in such mine shall be subject to the provisions of this chapter."

Section 802 of the statute defines "commerce", in relevant part, as "trade, traffic, commerce, transportation or communication among the several States, or between a place in a State and any place outside thereof. . . ." 30 U.S.C.A. § 802. The plaintiff relies upon the first and third paragraphs of its complaint as alleging that the products or operations of the coal mines that are the subject of this lawsuit enter or affect interstate commerce so as to confer upon this Court subject matter jurisdiction in the present action. The first paragraph simply states that the action is brought pursuant to 30 U.S.C.A. §§ 801 et seq.

Pled under Tort claim act and Admiralty are sole remedy; Effects must not admissible. See.

It is well settled that the mere recitation of a statute by a party cannot confer jurisdiction upon a federal district court. Beeler v. United States, 338 F.2d 687 (3rd Cir. 1964); 5 Wright and Miller, FEDERAL PRACTICE AND PROCEDURE § 1210. Accordingly, the plaintiff's having asserted that this action arises under 30 U.S.C.A §§ 801 et seq. would not, without more, confer subject matter jurisdiction upon this Court.

The plaintiff also seeks to rely upon the third paragraph of its complaint as sufficient to confer subject matter jurisdiction upon the Court. That paragraph states as follows:

> "At all relevant times mentioned herein, B & J Coal Mining and Leasing Company, Inc., operated coal mines and traded in coal in or near Whitwell, Marion County, Tennessee, within the jurisdiction of this Court."

The central phrase of that paragraph, for purposes of the present motion, would appear to be that the defendant "traded in coal . . . within the jurisdiction of this Court." That phrase, however, refers to the location of the subject coal mines for purposes of venue rather than to subject matter jurisdiction.

It is quite apparent that the plaintiff has failed to allege in his complaint that the products of the mines that are the subject of this litigation either "enter" or "affect" commerce. It is equally apparent that such allegations are a prerequisite to subject matter jurisdiction in the lawsuit. 30 U.S.C. § 803. Such allegations must therefore appear affirmatively upon the face of the complaint or otherwise the complaint must be adjudged fatally defective. Schultz v. Cally, 528 F.2d 470 (3rd Cir. 1975); Patton v. Baltimore & O. R. Co., 197 F.2d 732 (3rd Cir. 1952). See also Rule 8, FEDERAL RULES OF CIVIL PROCEDURE, and Wright and Miller, FEDERAL PRACTICE AND PROCEDURE § 1210.

Having concluded that the complaint in this lawsuit is fatally defective for failure to allege subject matter jurisdiction, action upon the defendant's remaining motions becomes moot. An order will enter in accordance with this memorandum dismissing the lawsuit for lack of jurisdiction.

United States District Judge

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

DEC 15 1983
Filed
Ent'd Order Bk 30 p 51 & 52
Karl D. Saulpaw, Jr., Clerk
By
Dep. Clerk

RAYMOND J. DONOVAN, Secretary
of Labor, United States
Department of Labor,

Plaintiff

v.

M & W COAL COMPANY, INC, AND
WILLIAM H. CRABTREE,

Defendants

CIVIL ACTION
FILE NO. 1-83-609

ATTEST:
A true copy. DEC 15 1983
Certified [illegible]
K[illegible] CLERK
By
Deputy Clerk

## JUDGMENT

This cause came on to be further considered by the Court upon application of the plaintiff for injunctive relief. The Court, having considered the record, it is,

ORDERED, ADJUDGED and DECREED that the defendants M & W Coal Company, Inc. and its agent William H. Crabtree, operators of a coal mine affecting interstate commerce, their agents, servants, employees, and all persons in active concert or participation with them be, and they hereby are permanently enjoined and restrained as follows:

1. From denying the Secretary of Labor or his authorized representatives entry to, upon or through M & W Coal Company, Inc's mine operations.

2. From refusing to permit the inspection of M & W Coal Company Inc's mining operation.

3. From interfering with, hindering, or delaying the Secretary of Labor or his authorized representatives in carrying out the provisions of the Federal Mine

Safety and Health Act of 1977, 30 U.S.C. 801, et seq., and it is further

4. Ordered that with respect to William H. Crabtree that the injunctive force of this Order shall apply to him only in regard to any future acts as operating agent for M & W Coal Company, Inc., and not otherwise. and it is further

ORDERED, ADJUDGED and DECREED that each party shall bear its own fees and other expesnes incurred by each party in connection with any stage of this proceeding be taxed against the defendants for which execution may issue.

APPROVED FOR ENTRY, this 5th day of December, 1983.

H. Ted Milburn
UNITED STATES DISTRICT JUDGE

EXHIBIT D

[redacted]

**U. S. Department of Labor**

Mine Safety and Health Administration
PO Box 572
Barbourville, Kentucky 40906

October 12, 1983

MEMORANDUM FOR: KENNETH DIXON

FROM: Lawrence L. Layne LLL

SUBJECT: Investigation of Discrimination Complaint, Case No. BARB-CD-83-33, Verlon David Parry vs. M. and W. Coal Company

M. and W. Coal Company is an illegal underground mine located near Jasper, Tennessee, which has operated for several years. About 20 miners work underground, one shift a day. The surface fan is not operated when miners are inside the mine. Blasting with fuses is done at the end of each shift and if smoke is in the faces the next morning, window fans are used for face ventilation.

The coal is hauled to Tennessee Consolidated Coal Company's Preparation Plant, to a Cement Plant on Suck Creek in Chattanooga, Tennessee, and to two other small tipples.

Max Condra stated that this mine has not been inspected because Jerry Spicer issued instructions to stay away from this operation.

To ascertain the disposition of Case No. BARB-CD-83-33 a determination of MSHA's jurisdiction must be made at this mine.

KEN-
WE ARE TRYING TO DETERMINE OWNERSHIP & PROVE JURISDICTION. HAVE CASE READY TO SEND TO ARLINGTON WHEN WE HEAR FROM TAYLOR

cc: ✓ Files

**U.S. Department of Labor**

Mine Safety and Health Administration
4015 Wilson Boulevard
Arlington, Virginia 22203

APR 13 1987

Mr. J. Davitt McAteer
Occupational Safety and Health Law Center
1536 16th Street, N.W.
Washington, D.C. 20036

Dear Mr. McAteer,

Secretary Brock has asked that I respond to your letter of December 15, 1986. I apologize for the delay in answering your letter which outlined your concerns about certain Mine Safety and Health Administration (MSHA) standards and regulations, together with your recommendations for addressing those concerns. Specifically, you raised questions about the agency's rulemaking process, and whether the standards and regulations being developed satisfy the mandates of the Federal Mine Safety and Health Act of 1977 (Mine Act).

Among your suggestions to address these matters was that the agency's standards and regulations currently under development, and the rulemaking process itself, be reviewed. Although I have just begun to look into this area of agency activity, enough concern has been expressed by you and others to convince me that such a review is warranted. I also believe that this agency's safety and health rules are the backbone of our efforts to carry out MSHA's responsibilities. With these two considerations in mind, I have asked agency technical personnel to identify for me safety and health issues which they believe need to be addressed in the standards being developed for underground coal mine roof control, ventilation, use of explosives and electricity. This same type of review is underway for the agency's standards concerning gassy metal and nonmetal mines, and proposals relating to the approval of mine plans and pattern of violations.

Following this review, we will continue the development of these standards. As you are aware, these projects are at various stages in the rulemaking process. Therefore, the approach to making any revisions will also vary. Regardless of the approach, however, I can assure you that the agency's mission of protecting and improving miner safety and health will guide our actions.

You also suggested in your letter that the rulemaking records for the standards and regulations currently under development reference certain materials. Consistent with the general principles of rulemaking, the record for each rule developed by MSHA includes all published documents, responses to requests for public comment and the information that is relied upon in the decisionmaking process. The agency's initial internal draft standards in the area of roof control, ventilation, explosives and electricity figured prominently in the Senate's oversight hearings in September and again more recently in March. We will also be consulting these staff drafts and members of the drafting committees during our review of the standards. I assure you that the final rules will be fully explained in the published preambles and supported by the record in every case.

Finally, you proposed that an advisory committee be appointed to make recommendations to MSHA about how to resolve the issues raised in your letter. At this point I do not believe that appointing an advisory committee for the purposes you suggest would be as constructive as the approach I have initiated. I firmly believe that the approach we have adopted, utilizing MSHA technical personnel who are highly competent safety and health professionals, will result in the proper resolution of the issues raised in the standards and regulations, several of which are in an advanced stage of development. Equally important, I believe that they can provide this input in a manner that will not unnecessarily delay the promulgation of important new rules.

As I have stated in my testimony before the Senate Committee, constructive criticism is welcome because it brings additional perspective to our efforts. Your concerns and views are notably valuable in this respect. I ask for your patience now as we reexamine the agency's regulatory process and projects, and move forward to address the issues you and others have raised.

Sincerely,

Alan C. McMillan
Deputy Assistant Secretary for
Mine Safety and Health

APR 0 8 1986

CONFIDENTIAL

Mr. J. Brian Hyland
Inspector General
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Hyland:

As you are aware, the Senate Committee on Labor and Human Resources held oversight hearings regarding the Mine Safety and Health Administration (MSHA) on March 11 and 12 during which a number of current and former MSHA employees testified. Their testimony raised serious allegations against individual managers or other employees at both the national and district levels. The allegations encompassed a broad spectrum of issues ranging from conflict of interest to lack of support for the enforcement personnel.

The hearing also raised several issues that are strictly programmatic in nature. MSHA has the appropriate resources available to review these issues and make any necessary recommendations. MSHA personnel are already involved in developing options so that we can take whatever action is needed.

However, MSHA's credibility as an Agency dedicated to vigorous enforcement of the Federal Mine Safety and Health Act of 1977 has been affected by the personal allegations that have been characterized in several public forums as mismanagement. I am personally concerned about these allegations and believe that as long as they go unanswered, MSHA's ability to effectively carry out its responsibilities is inhibited. We have an obligation to the Congress, the public in general, and the mining community in particular (including MSHA personnel), to determine the validity of the allegations and take whatever corrective action may be necessary.

Many of the criticisms raised involved actions or activities that occurred several years ago, the evaluation of which may require specialized resources and techniques. I, therefore, am requesting a special investigation by your office to review the allegations, evaluate them, and provide me with a complete report in as timely a manner as possible. Both thoroughness and timeliness are critical in order for MSHA to move forward and, perhaps most importantly, to restore the public's confidence in MSHA's commitment to miners' health and safety.

To facilitate your investigation, I have appointed Ms. Margaret Burton, MSHA's Director of Administration and Management, to act as liaison. She will be pleased to assist you in obtaining any documents, records or personnel interviews that may be needed during the course of the inquiry. We can make available to you a copy of those portions of the transcripts which contain my staff's and my testimony, as well as a videotape of the complete proceedings. I also am available to meet with you or your representative.

I believe this matter is critical to MSHA's credibility and, therefore, look forward to receiving your report expeditiously in order to have a full and complete record of the issues raised during the hearings.

Sincerely,

Alan C. McMillan
Deputy Assistant Secretary for
Mine Safety and Health

The **Chairman**. We will have as our next witness, Richard Trumka, who is President of the United Mine Workers of America. We apologize to all our witnesses for the delay that we have had.

I want to say what a pleasure it is to have Mr. Trumka here. I have had the good opportunity to know him for a number of years, to work with him on a number of issues, primarily those that are related to the welfare, the well-being and the employment of the mine workers he represents. And I had the good fortune to have spent time in mines in West Virginia and Kentucky, and out in Southern Illinois and some of the other parts of the country, out West, as well, and I have been impressed by the work of the Mine Workers.

I have had opportunities to speak with a number of the members, and I think all of us here in this Committee recognize that there is probably not a more dangerous employment in this country. The mine workers have provided essential sources of energy which have contributed to this country's strength and to its security, and it is a real pleasure to have you here, Mr. Trumka. We will ask you to proceed in whatever way you might want to.

## STATEMENT OF RICHARD L. TRUMKA, PRESIDENT, UNITED MINE WORKERS OF AMERICA

Mr. **Trumka**. Mr. Chairman, first of all, I thank you for those kind words, and on behalf of all my members and their families and all the individuals that work in the coal mining industry that are not part of our immediate family, we thank you for not only this effort but your past efforts and the efforts of this Committee to secure healthy and safe mines in this nation for our members to work in.

With the Chairman's indulgence, I would very much like to submit for the record my written statement and proceed.

The **Chairman**. Fine. We will proceed that way.

Mr. **Trumka**. Mr. Chairman, following a disaster in 1969, the last in a string of many, a new agency was created, an agency at that time that was separate from the Bureau of Mines.

Congress asked why weren't the mines in this country safe. They believed that a new agency was necessary, that the Bureau of Mines was perhaps too closely aligned with the industry, and as a result this new agency, then called MESA, should in fact be separate from the Bureau of Mines.

Well, our experience between 1969 and 1977, while showing an increase in the level of safety and health in the mines, was not satisfactory to this Committee, to the Congress, and to the working people of the industry, and a new Mine Act was passed in 1977.

That Act removed the agency at that time from the Department of Interior and placed it under the Department of Labor. It was believed, and I think rightly so, that Interior was too closely aligned with the industry, and thus, the agency that was supposed to protect the working people in the mines of this country should be independent.

Also at that time, MSHA was told to increase penalties for violations. You very artfully and correctly pointed out that penalties have gone down since then. They were told to increase enforcement. I think the testimony here very carefully and adequately shows that enforcement has in fact gone down. They were told to promulgate regulations to protect miners, and I think the testimony here clearly shows that regulations were submitted which weakened the protection which was afforded to miners.

They were told that accidents and fatalities were not being reported as required by the Act, and I think the testimony indicates that many MSHA districts were running independently of the central control here, particularly in District 9 and the West. We saw that proceed.

For several years, the mine workers asked why. Yesterday, I think we heard some indication why the Act was not being enforced. We heard about what I have to characterize as a scandalous and an incestuous relationship between MSHA and the industry that it was supposed to regulate.

To recap quickly, Mr. Chairman, the testimony that came about yesterday, we were told that MSHA district officials pulled inspectors off of mines that they were inspecting after they cited violations of the law. We were told about MSHA district officials pulling special investigators off of special investigations, intimidating special investigations, and breaking up special investigating teams. We were told about MSHA district officials' approval of mining plans that were inadequate and blocking investigation information after disasters.

We were told about MSHA district officials protecting many small—in some cases, illegally small—mines. We were told about 100 illegal mines operating within a 75-mile radius of one of the MSHA offices. And I was astounded today to hear that MSHA believes a certain group of mines now beyond their grasp, and that they felt compelled to allow that one illegal mine to exist for several years, and not appeal adverse decisions that were totally and clearly erroneous, unsupportable by any reading of the Act.

The CHAIRMAN. Or the Interstate Commerce Clause—the Constitution reaches that issue as well. Excuse me. I do not want to interrupt your flow here, but you are absolutely right.

Mr. TRUMKA. We were told about MSHA officials who testified that internal investigations on at least eight multiple fatalities implicating MSHA officials were basically swept under the rug, they did nothing about it; that MSHA actions which contributed to the death or injuries of miners were continued thereafter.

We were told about MSHA district officials who served as secretary-treasurer of the Harlan County Coal Operators' Association.

We were told about testimony that was presented to show that the Arlington office in some instances was supporting the actions of MSHA officials, particularly on the stopping of special investigations. The testimony revealed that a ventilation survey showing ventilation plans that were totally inadequate were approved in all ten MSHA districts, and the top officials who knew something about it did nothing to correct it.

And we were also told that top agency officials manipulated, I believe, the regulatory revisions of Mine Health and Safety Standards. Specialists' recommendations were changed, disregarded. And testimony showed that a top official assigned to do the final review announced his role as representing the Eastern Kentucky Coal Operators.

Mr. Chairman, I am afraid yesterday's testimony was only the tip of the iceberg. I believe that if MSHA is to be restored to the agency that it was intended to be by Congress, that we have to put an end, draw a curtain, a close to that era of non-enforcement. And I believe there is only one way to do that.

I believe that we should have appointed a special independent prosecutor, a special independent prosecutor to review the allegations that have been made. If they are in fact accurate, I think appropriate action should be taken. If they are not, that special independent prosecutor could in fact remove the cloud from the MSHA hierarchy that now exists in that agency. I think that independent prosecutor should investigate, he should ferret out to the fullest extent and send a clear and open message to the industry and to MSHA personnel. I believe we ought to find out just how far the industry has its hooks into the MSHA agency, and they must be exorcised and exorcised immediately.

We need answers to the questions why illegal mines flourish under the noses of MSHA officials; why investigations are obstructed; why inferior, inadequate mining plans are approved.

I believe a special independent prosecutor is essential if MSHA is to break with the past and to allow MSHA personnel who want to enforce the law to enforce the law.

I think we must also focus on the small mine area. Much has been said about that; not enough can be said about that. Small mines are not investing the necessary capital to protect miners. Mining plans that do not protect miners' lives and health are used, and those inferior plans are being approved by the Government's enforcement agency.

I was interested to note that one of the agency people who testified before me said that those small operators generally have fewer technical people. That is obviously true, and I would agree with that statement. I would ask the question: That being the case, why are those mines that have the least capable technical backup given plans, approved inferior mining plans, that are far more lenient than bigger mines, without ever having onsite investigations done, using MSHA's technical people.

Mine operators are simply not complying with the mandatory health and safety standards. MSHA is not enforcing the laws at those small mines, Mr. Chairman. And the changes in the standards that the MSHA agency has pursued basically ignore and reward the problems at small mines. Miners at those mines are being terribly intimidated, forced to do unsafe acts because of fear—economic fear.

I believe that the agency should start to enforce the law. This means more frequent and more thorough inspections and mandatory, stiff mandatory penalties for violations of those standards at small mines. I believe this should be done before, not after, tragedies occur.

I believe mining plans should be reviewed thoroughly before approval, paying special attention to the roof control and the ventilation plans' value in protecting miners' lives.

We need law and order throughout the industry, but especially in this segment.

Third, we need improved regulations that pay attention to small mines, not regulations that exempt them from the requirements in an unwelcome trade-off of operators' profits for miners' lives.

Finally, we need to address the problems associated with subcontracting, Mr. Chairman. For example, we should be able to hold the principal equally liable for misdeeds of the contractor-operator. Perhaps in this way, the penalty system could provide incentives so that the operators of small mines can have access to more resources, capital and human resources, to run their mines.

I believe that we should require full overhead roof-bolting in all of those mines.

I have to say I was appalled at the approach that MSHA took with regard to the illegal mines problem. There are virtually hundreds of illegal mines in Eastern Kentucky. Illegal mines, Mr. Chairman, are a national disgrace. They kill people; they steal natural resources; they injure the environment; they pay absolutely no taxes. They take and take and take, and never give.

I believe that MSHA must take every action necessary to close those illegal mines if the level of safety in the industry is ever going to be increased. If they need more resources, we should provide them with more resources. If they need a clearer mandate, we should provide them with that mandate.

I cannot emphasize enough the importance and the down-drag on the level of safety in the industry that these renegades represent to our industry.

I believe also that accident reporting procedures need to be investigated and overhauled. My written testimony talks in detail about this disastrous program and how in fact numerous injuries go unreported. Statistics look wonderful, but without accurate data to back them up, they are just that—statistics—and have no effect on protecting the miners' lives.

Another problem that I think needs to be carefully addressed, Mr. Chairman, is that inadequate mining plans are currently being approved without any type of investigation. We need to find out in many instances why. Is it the lack of personnel? Is it the lack of competence? Or, is it the lack of desire?

I suggest if it is any of those three, it needs to be corrected immediately, and the regulation process that has been described today and yesterday is being used, sir, to lessen—lessen—the level of safety that Congress mandated in 1969 and again in 1977. It must be stopped, and that regulation process refocused, with a clear message that regulations are designed to protect—to protect the health and safety of the miners.

Many of the proposed regulations have no root in that protection, but are designed rather at the insistence of people who would violate the law and show a total disregard for the health and safety of the people that work in their mines. They represent a total unfair and, I think, scandalous disadvantage to operators in this industry who do choose to be responsible, who do choose to provide a high level of health and safety in their mines.

I would state that I believe a special independent prosecutor is absolutely essential to put this behind us, to let the allegations be determined, so that it does not drag on, so that counter-charge and charge be passed back and forth and no resolution ever comes about. Without that, I am afraid that some people who may be involved, from the testimony that we have heard, will only be encouraged in the future. Having once gotten past, or once slipped through, by not enforcing the law, I am afraid that they may be encouraged and believe that they can escape by doing the same in the future. I am afraid that those MSHA personnel who want to enforce the law, who want to do their jobs, will be discouraged and quality personnel will leave by being demoralized; that the quality people that MSHA has will be stifled and prevented from doing their jobs.

If you will recall, Mr. Chairman, back in 1981, the head of MSHA assembled all of his district people and he gave them a speech. He told them that they should not look under every rock for a violation of the law. He told them that they should not engage in nitpicking citations of the law. The results, I think, shown by our written testimony and the graphs that accompany it, were devastating.

The message got through to the people at the lower level to go soft on enforcement of the law; that is what the agency wants. That message needs to be reversed, a very, very clear, concise reversal given to all of those people, and a rebuilding of the confidence of those who want to enforce the law needs to begin to take place.

The problem with MSHA, Mr. Chairman, is far-ranging and widespread. It is out into those MSHA districts. It is at the very top level. And I believe that we must bring down the curtain, and there is only one way to do that, and that is for us to put into place a special independent prosecutor for this specific time to look at the allegations that have been made to date to determine to what extent an incestuous relationship in Eastern Kentucky has prevented the MSHA officials from enforcing the law; how hundreds of illegal mines can exist; how adverse decisions at the very lowest level of the court proceedings can go unchallenged when they are so clearly erroneous.

I think by doing that, Mr. Chairman, we can begin to heal and mend an agency that is now badly torn and tattered, without direction, and currently pointed in the absolute wrong direction.

Mr. Chairman, I would again ask you to accept our written remarks, and I would welcome any questions you may have.

[The prepared statement of Mr. Trumka follows:]

# STATEMENT OF

RICHARD L. TRUMKA

PRESIDENT

UNITED MINE WORKERS OF AMERICA

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES

U. S. SENATE

ON

OVERSIGHT OF THE

MINE HEALTH AND SAFETY ADMINISTRATION

MARCH 12, 1987

## INTRODUCTION

AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA I SPEAK TODAY FOR NEARLY 250,000 RETIRED, LAID-OFF AND WORKING COAL MINERS IN THIS COUNTRY AND CANADA. I, AS WELL AS THE COAL MINERS OUR UNION REPRESENTS, FIRMLY BELIEVE THAT THERE IS NO OTHER ISSUE IN THE COAL INDUSTRY THAT EQUALS THE IMPORTANCE OF THE HEALTH AND SAFETY OF COAL MINERS.

IN THAT REGARD, I AM HERE TODAY TO TELL YOU THAT THE FEDERAL MINE SAFETY AND HEALTH PROGRAM IS OFF-TRACK. WHILE MAJOR GAINS WERE MADE IN REDUCING THE COAL MINING DEATH RATE AS A RESULT OF CONGRESS' DELIBERATE ACTIONS IN THE PASSAGE OF THE 1969 AND 1977 COAL MINE ACTS, THOSE GAINS HAVE DIMINISHED AS CONGRESSIONAL DIRECTIVES HAVE BEEN IGNORED BY THE AGENCY CONGRESS CREATED TO CARRY THEM OUT.

IN RECENT YEARS MSHA, THROUGH ITS REGULATIONS AND ENFORCEMENT POLICY, HAS ACTED TO REVERSE THE INTENT OF CONGRESS. MSHA CHOSE TO REVERT TO THE DAYS OF GOVERNMENT COOPERATION WITH MINE OPERATORS. COOPERATION HAS SIMPLY MEANT THAT PENALTIES AND ENFORCEMENT ACTIONS WOULD BE WEAKENED AGAINST MINE OPERATORS WHO DID NOT COMPLY WITH THE MINE ACT AT THE EXPENSE OF MINERS' HEALTH AND SAFETY PROTECTIONS. CONGRESS HAS REJECTED THIS APPROACH REPEATEDLY.

MSHA HAS CHOSEN TO IGNORE HAZARDS IN THE MINING INDUSTRY THAT INJURE AND KILL MINERS AND HAS PURSUED CHANGES THAT WEAKENED ENFORCEMENT, PENALTIES, AND REGULATIONS. EACH OF THESE CHANGES RUNS COUNTER TO CONGRESSIONAL INTENT.

OUR TESTIMONY WILL DESCRIBE HOW THE AGENCY IGNORED THE DIRECTIONS OF CONGRESS AND SET THEIR OWN COURSE -- A COURSE THAT HAS HAD AN ADVERSE IMPACT ON THE HEALTH AND SAFETY OF MINERS.

OUR TESTIMONY TODAY WILL ADDRESS MANY ISSUES THAT SHOW THE MISPLACED ATTITUDE OF THIS AGENCY AND THE NEEDED CHANGES IN DIRECTION.

## HISTORY

NO ONE REALLY KNOWS HOW MANY MINERS WERE KILLED IN COAL MINING ACCIDENTS IN THE UNITED STATES DURING THE 19TH CENTURY. RECORDS INDICATE THOUSANDS UPON THOUSANDS WERE KILLED; MANY MORE WENT UNNOTICED. BY THE TURN OF THE CENTURY, COAL MINING ACCIDENTS AND DISASTERS BEGAN TO DRAW ATTENTION. THE PUBLIC BEGAN TO REALIZE THAT DEATH AND DISASTER IN THE COAL MINES WERE AS COMMONPLACE AS THE SUN RISING EACH DAY.

BETWEEN 1900 AND 1910, THE DEATH TOLL IN COAL MINES WAS OVER 24,000. DEATH MADE NO DISTINCTION BETWEEN YOUNG AND OLD. MINERS OF ALL AGES PERISHED NEEDLESSLY. THEY PERISHED IN SINGLE ACCIDENTS AND THEY PERISHED IN MASSES, SUCH AS THE DECEMBER 6, 1907 TRAGEDY AT THE MONONGAH MINE IN WEST VIRGINIA. ON THAT DAY, 362 COAL MINERS WERE KILLED IN THIS COUNTRY'S WORST MINE DISASTER. THAT SAME YEAR, AN ESTIMATED 3,242 COAL MINERS WERE KILLED IN COAL MINING ACCIDENTS AND DISASTERS.

WITH COAL MINING DEATHS EACH YEAR IN THE THOUSANDS, CONGRESS DECIDED TO INTERVENE, AND IN 1910 STARTED DOWN A LONG ROAD, ENACTING LAWS TO PROTECT MINERS FROM THE DEATH TRAPS CREATED BY THEIR EMPLOYERS. WHAT RESULTED THAT YEAR WAS THE CREATION OF THE U.S. BUREAU OF MINES. THAT FIRST STEP WAS SMALL. THE BUREAU'S ONLY RESPONSIBILITY WAS TO GATHER INFORMATION ON THE DEATHS, INJURIES AND CONDITIONS IN THE MINE.

OVER THE YEARS, CONGRESS KEPT AN EYE ON THE ATROCIOUS CONDITIONS IN THE COAL MINING INDUSTRY AND THE OPERATORS' REFUSAL TO PROTECT MINERS. IN 1941, CONGRESS PASSED "TITLE ONE" OF THE FEDERAL COAL MINE SAFETY ACT. THAT LAW GAVE THE BUREAU THE POWER TO INSPECT COAL MINES. BUT IT FELL

SHORT OF THE NEED BECAUSE IT GAVE THE BUREAU ONLY GUIDELINES, WITH NO POWERS OF ENFORCEMENT. FROM 1941 TO 1946, OVER 6,000 COAL MINERS' LIVES WERE LOST.

IN 1947, CONGRESS AMENDED THE 1941 MINE ACT BY REQUESTING MINE OPERATORS AND STATE AGENCIES TO REPORT THE EXTENT OF COMPLIANCE WITH THE BUREAU'S RECOMMENDATIONS. MINE OPERATORS IGNORED THE NEW LAW.

IN 1952, THE FEDERAL COAL MINE HEALTH AND SAFETY ACT WAS ENACTED BY CONGRESS. THIS ACT BEGAN THE LENGTHY PROCESS OF PUTTING TEETH INTO THE LAW. AIMED PRIMARILY AT PREVENTING DISASTERS, THIS LAW SET MINIMUM STANDARDS THAT COAL MINE OPERATORS HAD TO MEET -- IF THEY EMPLOYED MORE THAN 15 MINERS. IT ALLOWED THE FEDERAL INSPECTORS TO WITHDRAW MINERS IF THEY ENCOUNTERED A SITUATION THAT POSED AN IMMINENT DANGER.

MINE DEATHS, INJURIES AND DISASTERS CONTINUED. IN 1966 CONGRESS PASSED A NEW LAW THAT EXPANDED THE OLD ACT TO SOME OF THE COUNTRY'S MOST DANGEROUS MINES -- THOSE THAT EMPLOYED FEWER THAN 15 MINERS. IT INCREASED ENFORCEMENT POWERS TO ALLOW THE BUREAU TO TAKE ACTION AGAINST REPEATED VIOLATIONS BY MINE OPERATORS. THE LAW FOCUSED ONLY ON DISASTER-RELATED MINE HAZARDS.

FOLLOWING THE 1966 MINE ACT, THE YEARLY DEATH TOLL DROPPED. BUT EVEN WITH THAT REDUCTION, MINE ACCIDENTS, DEATHS, EXPLOSIONS AND DISASTERS CONTINUED AT HIGH RATES.

ON A NOVEMBER DAY IN 1968, AN EVENT OCCURRED THAT SHOCKED THE NATION AND HELD OUR ATTENTION THROUGH THANKSGIVING, CHRISTMAS, AND FOR YEARS TO COME. ON NOVEMBER 20, 1968, AN EXPLOSION RIPPED THROUGH THE CONSOLIDATION COAL COMPANY'S NO. 9 MINE LOCATED IN FARMINGTON, WEST VIRGINIA. THAT DISASTER CLAIMED THE LIVES OF 78 MINERS AND OUTRAGED

THE NATION. 311 COAL MINERS WERE KILLED THAT YEAR. CONGRESS RESPONDED BY ENACTING THE LANDMARK 1969 COAL MINE HEALTH AND SAFETY ACT.

AFTER DECADES OF CALLOUS NEGLECT OF THE HEALTH AND SAFETY OF MINERS, THE 1969 COAL MINE HEALTH AND SAFETY ACT MARKED A NEW DEPARTURE IN THE FEDERAL APPROACH TO REGULATION. CONGRESS ABANDONED THE HOPE -- PROVEN FORLORN -- THAT THE INDUSTRY COULD POLICE ITSELF. CONGRESS INSTEAD DETERMINED TO FORCE THE COAL INDUSTRY TO PROTECT THE HEALTH AND SAFETY OF MINE WORKERS.

BY ANY STANDARD, THE 1969 ACT WAS A REMARKABLE PIECE OF LEGISLATION. IT CREATED AN AGGRESSIVE GOVERNMENT COMMITMENT TO DISEASE AND ACCIDENT PREVENTION AND PROVIDED COMPENSATION TO THE VICTIMS OF DISEASE. IT SET SPECIFIC STANDARDS TO PREVENT EXPLOSIONS, CONTROL FIRES, AND CONTROL OTHER SAFETY HAZARDS. IT MANDATED FREQUENT INSPECTIONS OF THE NATION'S COAL MINES, MANDATORY PENALTIES FOR VIOLATIONS OF THE LAW AND REGULATIONS, AND FREQUENT DUST MONITORING. TO ENSURE COMPLIANCE, IT VESTED EXTENSIVE POWERS IN COAL MINE INSPECTORS, INCLUDING THE POWER TO ENTER AND INSPECT MINES, TO CITE VIOLATIONS, AND TO SHUT DOWN A MINE. THE ACT ESTABLISHED STANDARDS FOR RESPIRABLE COAL MINE DUST AND CREATED AN IMAGINATIVE APPROACH TO COMPENSATING VICTIMS OF BLACK LUNG.

THE ACCOMPLISHMENTS OF THE ACT ARE IMPRESSIVE. FATALITY RATES FOR BOTH SURFACE AND UNDERGROUND COAL MINES HAVE DECLINED SIGNIFICANTLY SINCE IT WAS ENACTED. PRIOR TO THE ACT, THE FATALITY RATE FOR SURFACE MINES WAS ACTUALLY INCREASING AND THE RATE FOR UNDERGROUND MINES WAS SHOWING NO PROGRESS AT ALL. WE BELIEVE THAT THESE IMPROVEMENTS WERE DUE TO STRINGENT ENFORCEMENT OF THE LAW AS WAS INTENDED BY CONGRESS.

THERE ALSO HAS BEEN PROGRESS IN CONTROLLING RESPIRABLE DUST. BEFORE THE ACT, DUST LEVELS WERE NOT DOCUMENTED CAREFULLY, BUT PROBABLY AVERAGED 5 TO 6 MILLIGRAMS OF RESPIRABLE DUST PER CUBIC METER OF AIR. NOW, ACCORDING TO OPERATOR SAMPLES SUBMITTED TO MSHA -- NOT ALWAYS A RELIABLE SOURCE OF INFORMATION -- AVERAGE DUST LEVELS ARE BELOW 1 $mg/m^3$.

OVER THE PAST 16 YEARS, APPROXIMATELY 600,000 VICTIMS OF BLACK LUNG AND THEIR DEPENDENTS HAVE RECEIVED $15 BILLION IN COMPENSATION PAYMENTS, WITH CURRENT ANNUAL OUTLAYS OF ABOUT $1.6 BILLION. THERE IS A DOUBLE MESSAGE HERE: FIRST, HUMAN SUFFERING HAS BEEN MITIGATED (TO THE EXTENT THAT MONEY CAN, WITH AN INCURABLE DISEASE), AND SECOND, THERE ARE SIGNIFICANT COSTS ASSOCIATED WITH THE NECESSARY TASK OF COMPENSATING VICTIMS FOR DECADES OF NEGLECT. THESE COSTS SHOULD SERVE NOTICE TO GOVERNMENT AND INDUSTRY ALIKE THAT THE COST OF PREVENTION IS MUCH LESS THAN THAT OF PAYING FOR OUR NEGLECT OF THE HUMAN RIGHT TO A HEALTHFUL WORK PLACE.

DESPITE ITS ACCOMPLISHMENTS, CONGRESS STRENGTHENED AND CLARIFIED THE 1969 ACT WITH THE BLACK LUNG BENEFITS AMENDMENT OF 1972 AND THE MINE SAFETY AND HEALTH ACT OF 1977. KEY PROVISIONS OF THE LATTER INCLUDED TRANSFER OF REGULATORY RESPONSIBILITY FROM THE MINING ENFORCEMENT SAFETY ADMINISTRATION (MESA) IN THE DEPARTMENT OF INTERIOR (WHICH ALSO HAS RESPONSIBILITY FOR MINING RESEARCH AND THE PROMOTION OF MINING) TO THE MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) IN THE DEPARTMENT OF LABOR. THE OBVIOUS RATIONALE FOR THIS TRANSFER WAS TO INSURE THAT THE CONTROLLING AGENCY HAD NO CONFLICT OF INTEREST WITH ITS MANDATE TO PROTECT THE HEALTH AND SAFETY OF MINERS. THE MAJOR CHANGES IN THE 1977 ACT WERE: REQUIRING MANDATORY TRAINING OF MINERS, DIRECTING STRONGER ENFORCEMENT MEASURES AND MORE

SEVERE PENALTIES, AND STRENGTHENING THE RULE-MAKING AUTHORITY. METAL AND NON-METAL MINES WERE ALSO COVERED BY THE NEW AGENCY.

IMPORTANT FOR TODAY'S TESTIMONY, CONGRESS WAS DISSATISFIED WITH THE PENALTIES ASSESSED MINE OPERATORS WHO VIOLATED THE LAW AND THE WEAK PENALTY COLLECTION SYSTEM. CONGRESS RECOGNIZED THAT A TOUGH REGULATORY STANCE AND STRICT ENFORCEMENT WAS NEEDED TO CAUSE IMPROVEMENTS IN MINE HEALTH AND SAFETY. THUS, THEY STRENGTHENED THAT SYSTEM.

## AGENCY IMPLEMENTATION OF THE 1977 MINE ACT

WITH THE 1969 AND 1977 ACTS, CONGRESS BASICALLY GAVE THE AGENCY TWO IMPORTANT JOBS: SETTING STANDARDS AND ENFORCING THEM. OUR TESTIMONY, BOILED DOWN TO ITS ESSENTIALS, IS THAT THE AGENCY HAS FAILED TO DO BOTH JOBS. IN RECENT YEARS, UNDER THE GUISE OF REGULATORY REFORM, IT HAS TRIED TO WEAKEN STANDARDS. IT HAS ACCOMMODATED OPERATORS' INTERESTS AT THE EXPENSE OF COAL MINERS' HEALTH AND SAFETY. AND, DURING THIS SAME PERIOD, IT HAS REDUCED ITS ENFORCEMENT EFFORT. IT HAS REDUCED THE NUMBER OF ENFORCEMENT PERSONNEL, FETTERED THEM WITH POLICIES THAT SUBVERT THEIR PROFESSIONAL JUDGEMENT AND DENIED THEM ESSENTIAL SUPPORT. WE WILL DISCUSS, FIRST, PROBLEMS OF ENFORCEMENT AND, SECOND, THE AGENCY'S ACTIONS WITH REGARD TO REGULATORY REFORM.

## ENFORCEMENT

DURING THE CONSIDERATION OF THE 1977 AMENDMENTS, CONGRESS NOTED SEVERAL DIFFICULTIES WITH THE PENALTY SYSTEM IMPLEMENTED UNDER THE 1969 ACT. FIRST, THE INITIAL ASSESSMENTS WERE MUCH TOO LOW. IT WAS NECESSARY THAT PENALTIES "BE OF AN AMOUNT WHICH IS SUFFICIENT TO MAKE IT MORE ECONOMIC FOR AN OPERATOR TO COMPLY WITH THE ACT'S REQUIREMENTS

THAN IT IS TO PAY THE PENALTIES ASSESSED AND CONTINUE TO OPERATE WHILE NOT IN COMPLIANCE." (S. REP. NO. 95-181, 95TH CONG., 1ST SESS., 41 (1977), HEREINAFTER "SENATE REPORT.") SECOND, THERE WAS MUCH TOO LONG A GAP BETWEEN THE TIME THE VIOLATION WAS CITED AND THE PENALTY WAS PAID. THIRD, THE APPEAL SYSTEM WAS ABUSED AND THERE WAS "UNWARRANTED LOWERING OF PENALTIES AS A RESULT OF OFF-THE-RECORD NEGOTIATIONS..." (S. REP., SUPRA AT 45.)

ALTHOUGH OBVIOUSLY DISAPPOINTED IN THE SECRETARY'S PENALTY COLLECTION EFFORTS UNDER THE 1969 ACT, CONGRESS REAFFIRMED ITS BELIEF IN THE IMPORTANCE OF AN EFFECTIVE PENALTY SYSTEM FOR IMPROVING HEALTH AND SAFETY IN THE MINES:

> THE ASSESSMENT AND COLLECTION OF CIVIL PENALTIES UNDER THE COAL ACT HAS ALSO BEEN A GREAT DISAPPOINTMENT TO THE COMMITTEE. THE COMMITTEE FIRMLY BELIEVES THAT THE CIVIL PENALTY IS ONE OF THE MOST EFFECTIVE MECHANISMS FOR INSURING LASTING AND MEANINGFUL COMPLIANCE WITH THE LAW. SIMPLE COMPARISON OF THE IMPROVEMENTS IN THE RATES OF FATAL AND SERIOUS NON-FATAL OCCURRENCES IN BOTH THE COAL INDUSTRY, UNDER THE CIVIL PENALTY SYSTEMS, AND THE METAL/NON-METALLIC INDUSTRY UNDER A SYSTEM OF NO CIVIL PENALTIES CLEARLY INDICATES THE EFFECT, IN TERMS OF IMPROVED SAFETY AND HEALTH TO MINERS, OF THE CIVIL PENALTY SYSTEM. (S. REP., SUPRA AT 15, EMPHASIS ADDED.)

A MAJOR IMPETUS BEHIND THE 1977 AMENDMENTS, THEREFORE, WAS CONGRESS' REALIZATION THAT MINE OPERATORS "STILL FIND IT CHEAPER TO PAY MINIMAL CIVIL PENALTIES THAN TO MAKE THE CAPITAL INVESTMENTS NECESSARY TO ADEQUATELY ABATE UNSAFE OR UNHEALTHY CONDITIONS..." (S. REP., SUPRA AT 4.)

TO CORRECT THIS CONDITION, CONGRESS IMPLEMENTED REFORMS DESIGNED TO SPEED THE PROCESS OF PENALTY COLLECTION AND INCREASE THE AMOUNTS COLLECTED. BY ELIMINATING THE OPERATOR'S RIGHT TO A DE NOVO HEARING IN A UNITED STATES DISTRICT COURT, THE 1977 ACT EXPEDITED THE PROCESS OF PENALTY COLLECTION. AT THE SAME TIME, AMENDMENTS WERE ADDED LIMITING THE ABILITY TO COMPROMISE PENALTIES ONCE THEY WERE ASSESSED.

ALTHOUGH THE MESSAGE FROM CONGRESS WHEN IT PASSED THE 1977 ACT WAS CLEARLY TO INCREASE THE PENALTIES, MSHA TOOK A DIFFERENT VIEW AND INSTITUTED ACTIONS THAT WEAKENED THOSE 1977 CONGRESSIONAL ACTIONS.

IN 1982, MSHA ISSUED NEW RULES THAT ESTABLISHED A MINIMUM PENALTY OF $20 FOR WHAT WERE CONSIDERED NON-SERIOUS VIOLATIONS. THIS COMPROMISED THE APPROACH CONGRESS CLEARLY WANTED, AN APPROACH THAT HAD RESULTED IN FINES OF UP TO $10,000 PER VIOLATION -- FOR THOSE VIOLATIONS THAT COULD LEAD TO INJURY. SIMULTANEOUSLY, THE AGENCY INSTITUTED A NEW POLICY ON SIGNIFICANT AND SUBSTANTIAL (S.&S.) VIOLATIONS. THIS NEW POLICY WAS AN OVERREACTION TO A DECISION BY THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION (SECRETARY OF LABOR V. CEMENT DIVISION, NATIONAL GYPSUM CO., 3 FMSHRC 822 (1981)), WHICH SET OUT MORE STRINGENT STANDARDS FOR THE AGENCY TO FOLLOW IN DECIDING WHETHER CITATIONS SHOULD BE CONSIDERED "SIGNIFICANT AND SUBSTANTIAL." THE AGENCY TIED TOGETHER THE $20 FINE TO THE NEW S.&S. POLICY AND THE EFFECT WAS DEVASTATING.

FOR EXAMPLE, IN 1980, THE S.&S. RATE WAS APPROXIMATELY 80%. THE AVERAGE PENALTY ASSESSED PER VIOLATION WAS $142. BY 1983, WHEN THE NEW POLICIES AND RULES WERE FULLY IMPLEMENTED, THE S.&S. RATE FELL NATIONALLY TO APPROXIMATELY 31% AND THE AVERAGE PENALTY FELL TO $65. PENALTIES BECAME MORE OF A JOKE THAN A REAL DETERRENT.

POLICY WAS A SHAMBLES, WITH UNEXPLAINED HIGH VARIATIONS IN THE PROPORTION OF S.&S. VIOLATIONS AMONG MSHA DISTRICTS. TAKE, FOR INSTANCE, MSHA DISTRICT 5. IN JUNE OF 1983, A DISASTER OCCURRED AT THE MCCLURE MINE IN VIRGINIA, CLAIMING SEVEN LIVES. A REVIEW OF THE ASSESSMENT STATISTICS SHOWS THAT THE S.&S. RATE IN THE MSHA FIELD OFFICE INSPECTING THAT AREA FELL TO 8%, WHICH MEANS THAT 92% OF THE VIOLATIONS CITED BY MSHA WERE CONSIDERED NON-S.&S. MINE OPERATORS IN THAT AREA COULD EXPECT TRIVIAL PENALTIES OF ONLY $20 RATHER THAN FEAR PENALTIES OF $10,000 FOR VIOLATIONS. THE USE OF THE PENALTY SYSTEM AS A DETERRENT WAS LOST.

DURING DELIBERATIONS ON THE 1977 MINE ACT, CONGRESS ALSO SAW THE NEED TO INCREASE ENFORCEMENT ACTION AGAINST MINE OPERATORS WHO HABITUALLY VIOLATED THE LAW, AND ADDED A REQUIREMENT (SECTION 104(e)) THAT WOULD INCREASE PENALTIES AGAINST THESE OPERATORS. THIS, LIKE OTHER SECTIONS OF THE LAW THAT CONGRESS ORDERED MSHA TO ENFORCE, WAS NEVER IMPLEMENTED. CONGRESS SPECIFICALLY DIRECTED THE AGENCY TO DEVISE REGULATIONS FOR A NEW ENFORCEMENT TOOL, ONE THAT ADDRESSED A "PATTERN OF VIOLATIONS". THE AGENCY HAS NOT. AS A RESULT, MSHA HAS NOT ENFORCED THAT SECTION OF THE LAW AT ONE SINGLE COAL MINE. THE AGENCY'S LEADERS THUMBED THEIR NOSES AT CONGRESS.

MSHA'S COMMITMENT TO CONGRESSIONAL INTENT BEGAN TO DECLINE IN 1979. WITH THE APPOINTMENT OF FORD B. FORD TO RUN THE AGENCY IN 1981, IT DISAPPEARED. FOLLOWING HIS APPOINTMENT, FORD CALLED THE TOP LEVEL MANAGERS OF MSHA TO BECKLEY, WEST VIRGINIA. HE ADVISED THEM THAT MSHA NEEDED TO BE MORE COOPERATIVE AND LESS ADVERSARIAL. HE ALSO ADVISED THEM THAT THEY NEED NOT TURN OVER EVERY ROCK TO FIND VIOLATIONS, NOR ENGAGE IN CITING NIT-PICKING VIOLATIONS. THE TIMING OF THIS SPEECH WAS ASTOUNDING. IT CAME AFTER A DISASTER-RIDDEN YEAR IN THE COAL INDUSTRY: 15 MINERS DIED IN A DISASTER IN APRIL, 1981, AT DUTCH CREEK'S NO. 1 MINE

IN COLORADO. THEN, IN THE SIX WEEKS IMMEDIATELY PRIOR TO THIS SPEECH, 13 MINERS DIED AT THE GRUNDY NO. 21 MINE IN TENNESSEE AND 8 DIED IN A DISASTER AT THE ADKINS' NO. 11 MINE IN KENTUCKY. ALMOST SIMULTANEOUS WITH MR. FORD'S SPEECH, 7 MORE MINERS DIED AT THE RFH NO. 1 MINE IN KENTUCKY. THE INSENSITIVITY OF THE AGENCY WAS BEYOND BELIEF. THE FATALITY RATE IN 1981 WAS THE HIGHEST IT HAD BEEN SINCE 1973. THE AGENCY WAS LOCKED INTO ITS "COOPERATIVE APPROACH" -- WHICH, BETTER DEFINED, MEANT REDUCING ENFORCEMENT ACTION AND PENALTIES AGAINST MINE OPERATORS WHO VIOLATED THE LAW -- RATHER THAN PAYING ATTENTION TO BUSINESS.

IN ANY EVENT, MINE INSPECTORS GOT THE MESSAGE.

THERE WAS IMMEDIATE DETERIORATION IN MINE SAFETY ENFORCEMENT. THE NUMBER OF ASSESSED VIOLATIONS DROPPED (SEE CHART #1), PENALTIES DROPPED (SEE CHART #2), THE S.&S. RATES DROPPED (SEE CHART #3), THE AVERAGE PENALTY PER VIOLATION DROPPED (SEE CHART #4) AND THE TREND ESTABLISHED BY THE 1969 MINE ACT OF REDUCING MINING DEATHS STAGNATED (SEE CHART #4 AND ATTACHMENT #1). CONGRESSIONALLY-MANDATED ENFORCEMENT WAS REPLACED BY ONE-SIDED "COOPERATION" AND MINERS PAID WITH THEIR LIVES.

THOUGH MSHA CLAIMS CREDIT FOR THE SMALLER NUMBER OF MINING DEATHS IN RECENT YEARS, THE AGENCY IS NOT RESPONSIBLE FOR THAT DECREASE. RELATIVELY SLOW GROWTH IN COAL DEMAND IN THE 1980s, COUPLED WITH EXTRAORDINARY PRODUCTIVITY INCREASES HAS PREVENTED AN INCREASE IN DEATHS SIMPLY BY REDUCING THE SIZE OF THE WORK FORCE. THE CLOSURE OF MANY INEFFICIENT AND POORLY MANAGED MINES THAT SURVIVED ONLY BECAUSE OF THE COAL BOOM OF THE 1970s ALSO HAS CONTRIBUTED TO THE DECLINE IN DEATH AND DISABILITY. MOREOVER, THE CURRENT WORK FORCE HAS THE BENEFIT OF THE EXTENSIVE TRAINING MANDATED BY THE 1977 ACT. FINALLY, THE TREND TOWARD LOWER FATALITY RATES THAT OCCURRED IN THE 1970s HAS NOT CONTINUED IN RECENT YEARS.

IN FEBRUARY OF 1983, THE UMWA REPORTED TO THE HOUSE SUB-COMMITTEE ON EDUCATION AND LABOR ON THE AGENCY'S SUBVERSION OF THE 1977 MINE ACT. AT THAT HEARING, WE SUBMITTED EVIDENCE OF THE AGENCY'S ACTIONS IN LOWERING PENALTIES FOR VIOLATIONS OF THE MINE ACT, IN LOWERING THE PROPORTION OF VIOLATIONS CONSIDERED S.&S. AND IN TAKING OTHER WEAK ENFORCEMENT ACTIONS WHERE VIOLATIONS WERE FOUND. THE UMWA ALSO REPORTED ON MSHA'S FAILURE TO PROMULGATE REGULATIONS IN KEY AREAS OF THE 1977 MINE ACT, DESPITE CONGRESSIONAL INTENT, AND ON THE AGENCY'S "COOPERATIVE" ATTITUDE TOWARD MINE OPERATORS.

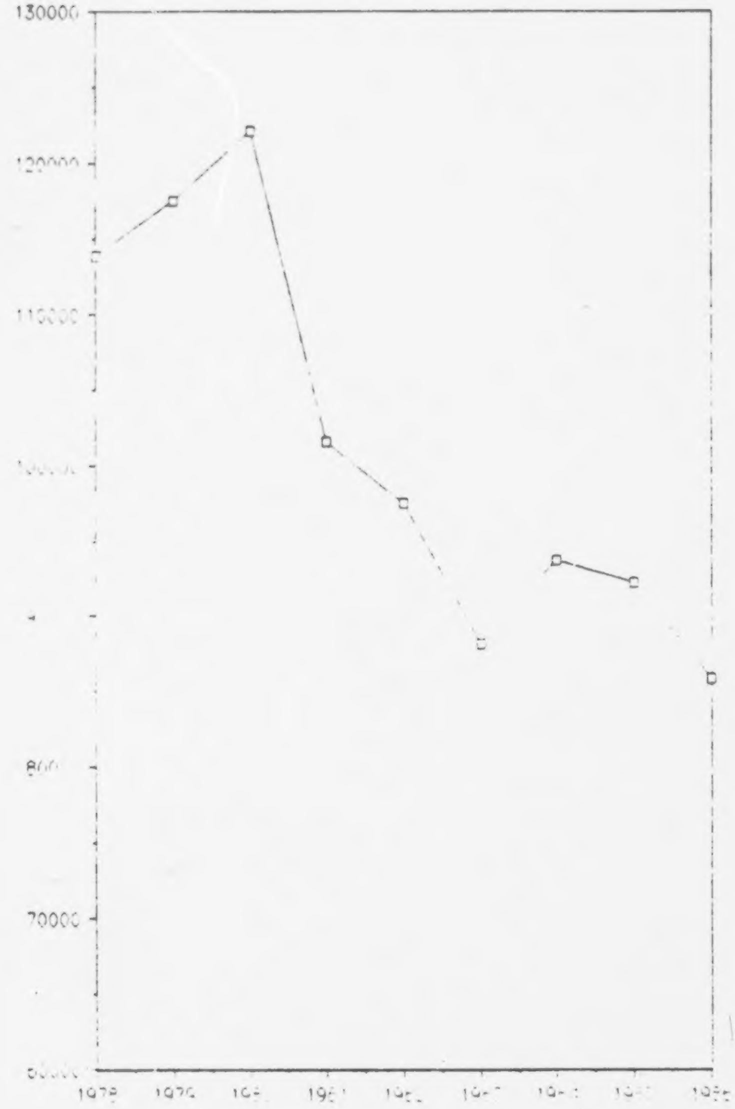
THE UMWA PROVIDED THE COMMITTEE WITH SEVERAL MSHA INSPECTION REPORTS SHOWING THAT THE AGENCY WAS CITING DANGEROUS MINING CONDITIONS AS NON-S.&S., SUBJECT ONLY TO THE $20 PENALTY. THESE INCLUDED HIGH LEVELS OF EXPLOSIVE METHANE GAS, SERIOUS MINE ROOF CONDITIONS, FIRE AND EXPLOSION HAZARDS, SUCH AS ENORMOUS AMOUNTS OF COMBUSTIBLE MATERIALS, DISRUPTIONS IN MINE VENTILATION SYSTEMS, ELECTRICAL SHOCK HAZARDS, AND OTHER SERIOUS CONDITIONS THAT COULD EASILY RESULT IN MINE INJURIES, DEATHS OR DISASTERS. ALONG WITH CONGRESS, THE GENERAL PUBLIC AND MINERS BECAME MORE AWARE OF THE AGENCY'S REFUSAL TO ELIMINATE PRACTICES THAT ENDANGERED MINERS' LIVES. COAL MINERS BEGAN TO BELIEVE THAT, JUST LIKE THE MINE OPERATOR, THE FEDERAL AGENCY COULD NOT BE TRUSTED TO PROTECT THEM. THE MINERS ALSO PRESSED THE AGENCY TO ENFORCE THE MINE ACT. AS A RESULT OF THE PUBLIC AWARENESS OF THESE PROBLEMS AND THE MINERS' ACTIONS TO FORCE THE AGENCY TO LIVE UP TO ITS MANDATE, THERE HAS BEEN A MORE REALISTIC INTERPRETATION OF "S.&S." VIOLATIONS. OTHER INDICATORS OF A COMMITMENT TO LAW ENFORCEMENT, HOWEVER, CONTINUE TO LAG. (SEE ACCOMPANYING CHARTS 1, 2 AND 4.)

THE ATTEMPTS BY THE TOP LEVEL OF THE AGENCY TO WEAKEN THE MINE ACT DID NOT STOP. THE AGENCY CONTINUED TO IGNORE IMPLEMENTATION OF REGULATIONS DIRECTED BY CONGRESS. IN-

STEAD OF IMPLEMENTING A REGULATORY PROGRAM THAT WOULD PROTECT MINERS, MSHA ADOPTED "REFORMS" THAT PROMOTED OPERATOR INTERESTS WHILE SIDESTEPPING SERIOUS CONDITIONS THAT CLAIM MINERS' LIVES. MSHA CONTINUED THE MESSAGE OF COOPERATION TO MINE OPERATORS, RESISTED SPECIAL INVESTIGATIONS AGAINST THOSE OPERATORS AND REFUSED TO TAKE ENFORCEMENT ACTIONS THAT WOULD IMPROVE CONDITIONS. I WOULD LIKE TO REVIEW SOME OF THE CONTINUING PROBLEMS.

## CHART #1

## Number of Violations



## CHART #2

## Penalties Collected

(000)

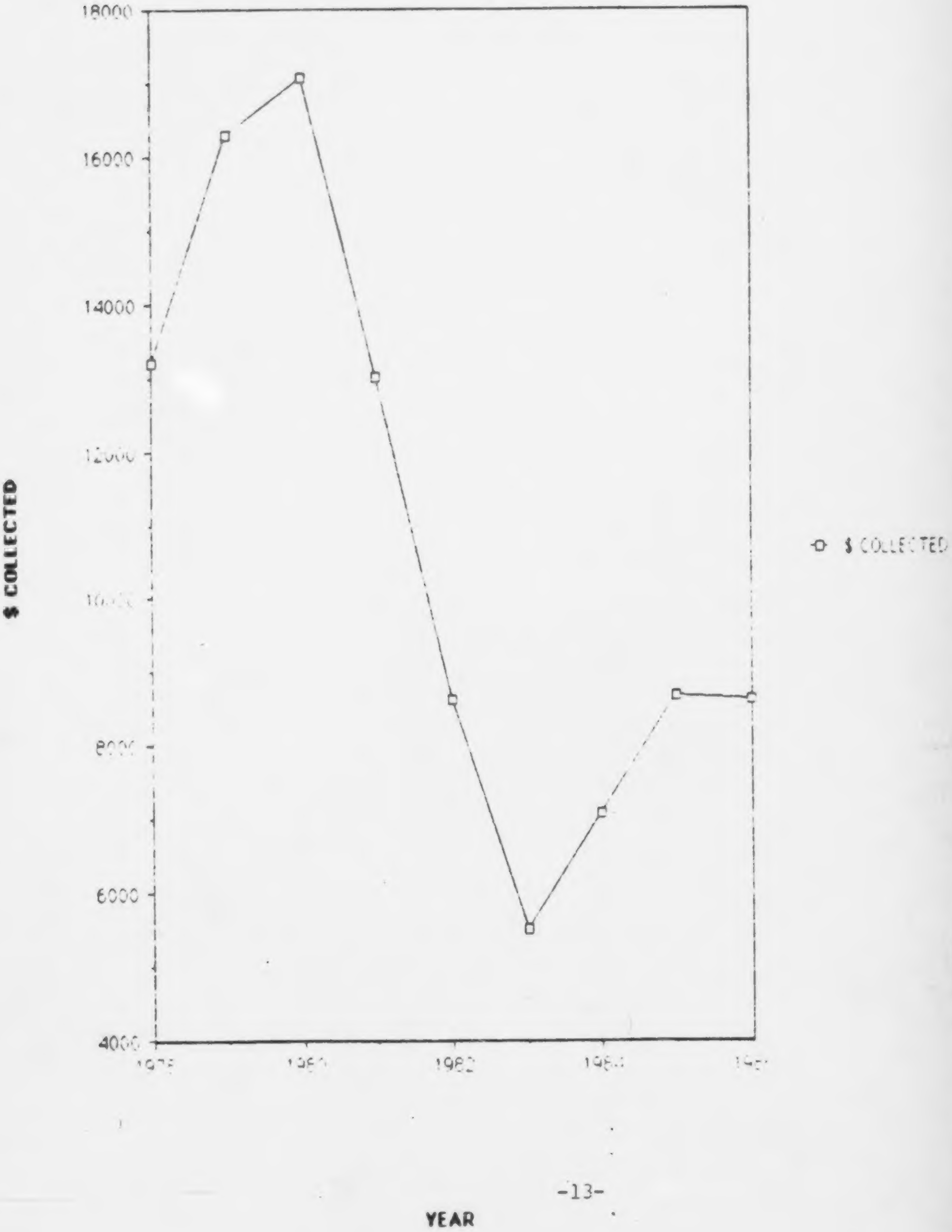
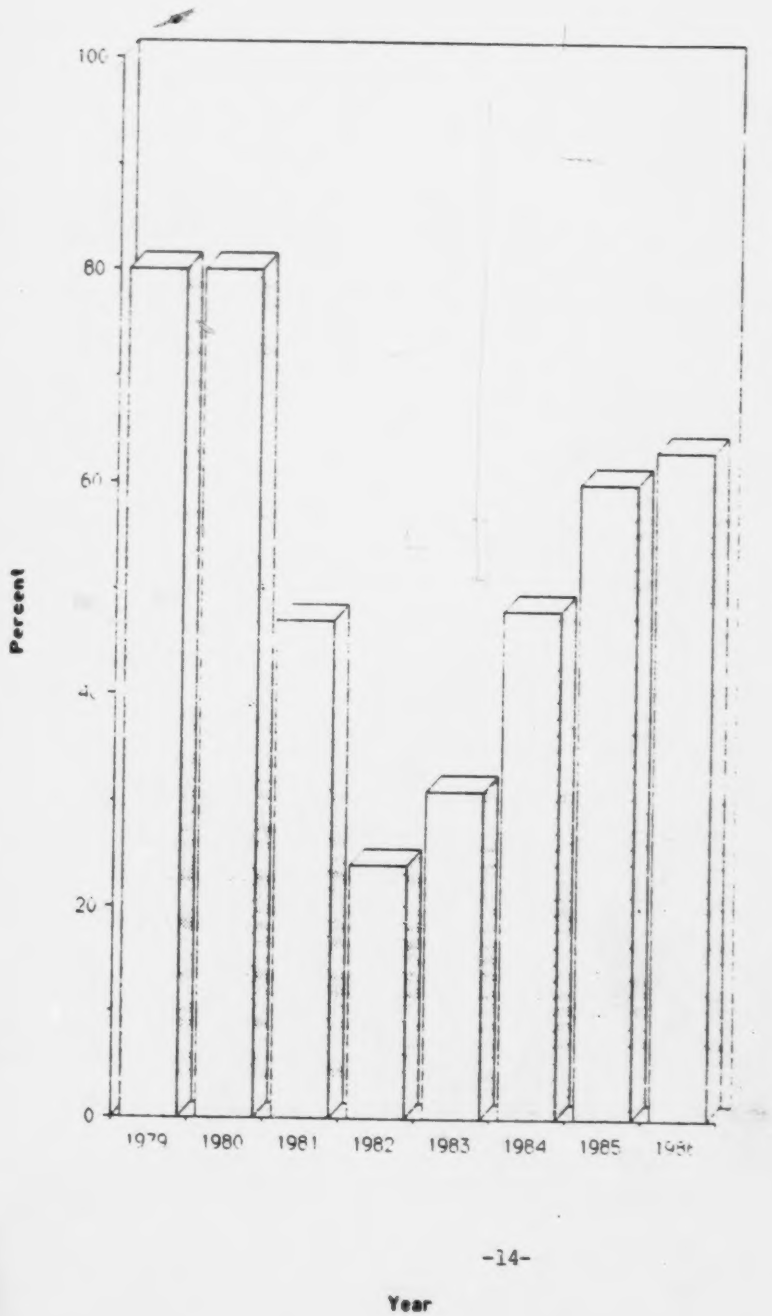


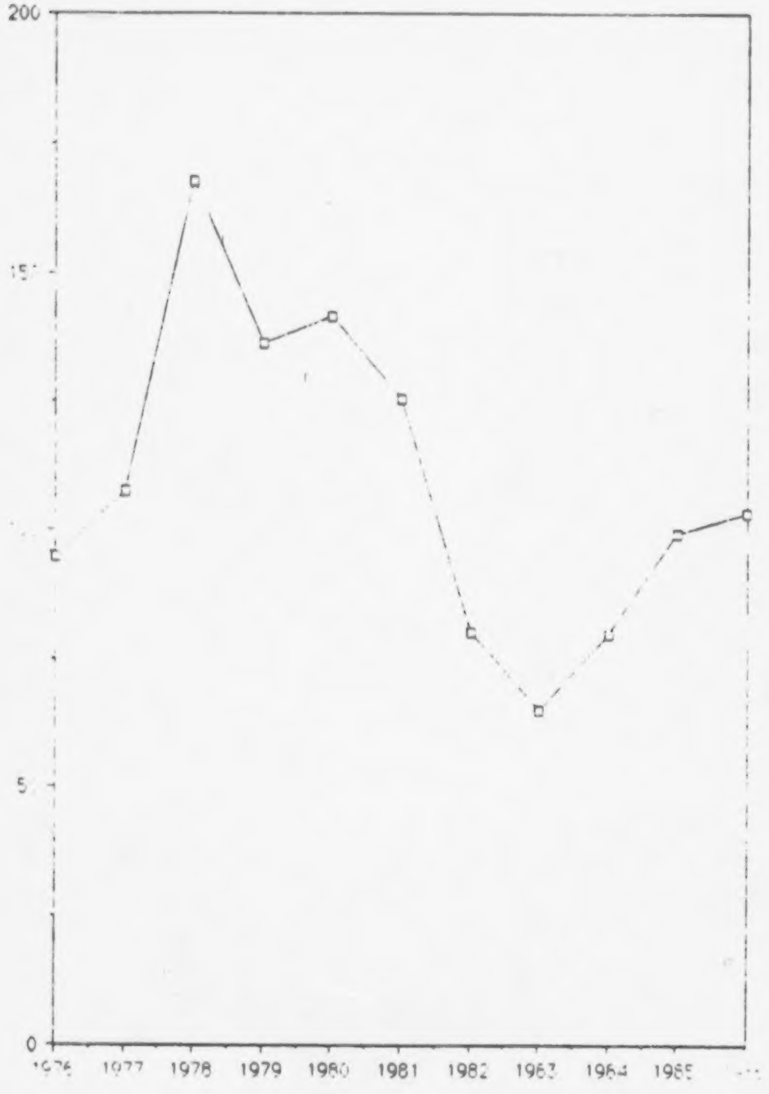
CHART #3

## S & S Violations

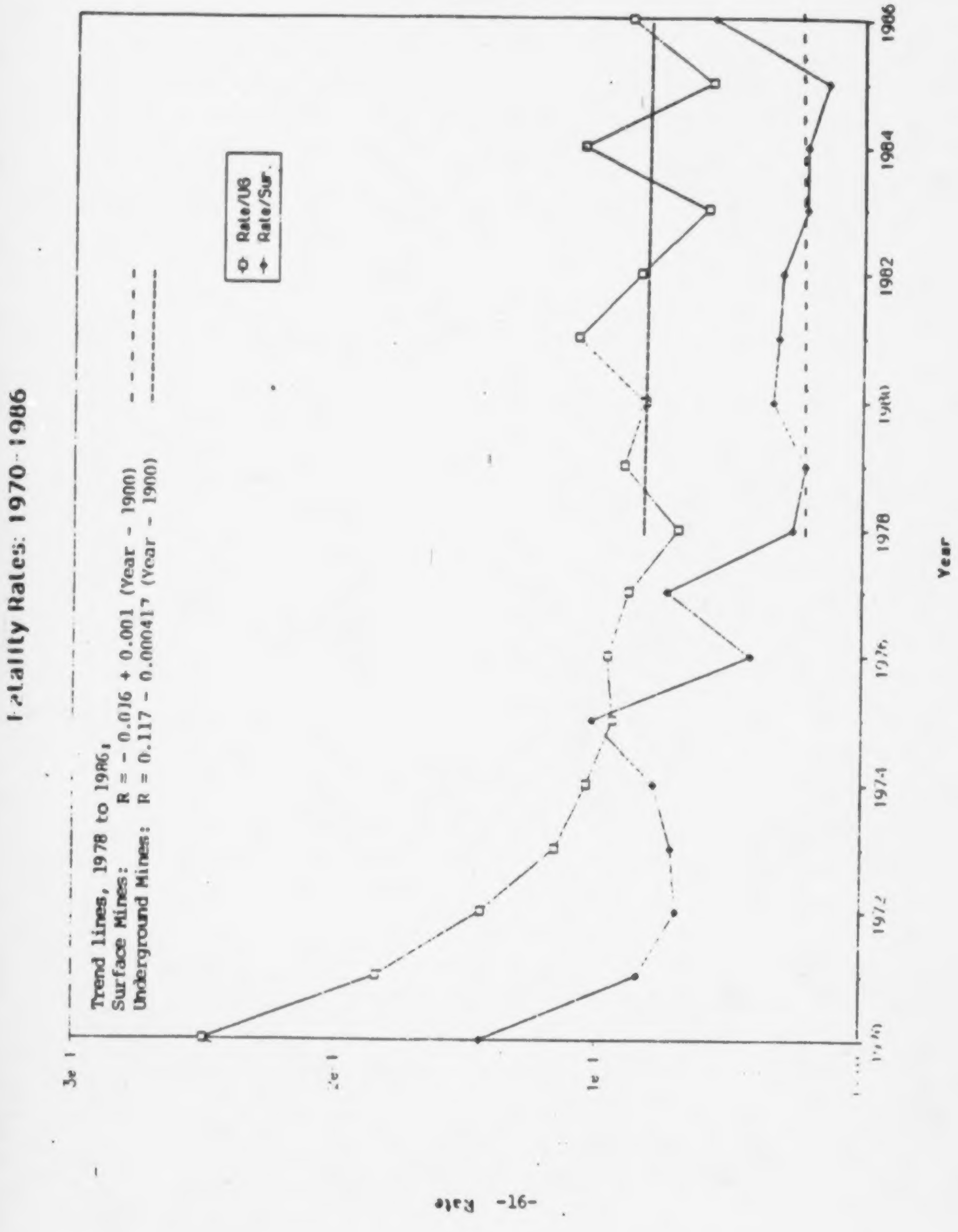


## CHART #4

## Average Penalty Per Violation



## CHART #5


Fatality Rates: 1970-1986
Trend lines, 1978 to 1986;
Surface Mines: R = - 0.016 + 0.001 (Year - 1900)
Underground Mines: R = 0.117 - 0.000417 (Year - 1900)
Rate/UG
Rate/Sur.
3e-1
2e-1
1e-1
0
1970
1972
1974
1976
1978
1980
1982
1984
1986
Year
Rate

## ACCIDENT/INJURY REPORTING

MSHA OFFICIALS BRAG OF REDUCING MINE ACCIDENT AND INJURY RATES. WE SUBMIT THAT THERE HAS BEEN NO SIGNIFICANT IMPROVEMENT. THE PRIMARY REASON FOR THE APPARENT RATE REDUCTION IS THE OPERATORS' FAILURE TO COMPLY WITH THE REPORTING REQUIREMENTS, DUE TO MSHA'S FAILURE TO ENFORCE THE LAW. EVEN WHEN MSHA CAUGHT MINE OPERATORS VIOLATING THE REPORTING REQUIREMENTS, THE AGENCY ONLY ISSUED MINOR PENALTIES. FOR EXAMPLE, BETWEEN 1982 AND 1984, THE NORTH AMERICAN COAL COMPANY IN OHIO FAILED TO REPORT OVER 600 LOST-TIME INJURIES AT THREE OF THEIR MINES. WHEN THE UMWA FORCED MSHA TO CITE THEM FOR THIS OUTRAGEOUS DISREGARD FOR THE LAW, THE AGENCY ISSUED ONLY THREE CITATIONS AT EACH MINE. EVEN THESE WERE CITED AS NON-S.&S. VIOLATIONS, ACCOMPANIED BY WEAK PENALTIES.

DURING SENATE HEARINGS IN THE WINTER OF 1985, SENATOR METZENBAUM (D-OHIO) RAISED SEVERAL QUESTIONS REGARDING MSHA'S ENFORCEMENT OF THE ACCIDENT/INJURY REPORTING REQUIREMENTS. AS A RESULT OF SENATOR METZENBAUM'S QUESTIONS, SECRETARY OF LABOR BROCK ANNOUNCED THAT MSHA WOULD TAKE TOUGHER ACTION ON OPERATORS' FAILURE TO REPORT ACCIDENTS AND INJURIES. ON JANUARY 2, 1986, MSHA ISSUED A POLICY STATEMENT TO THAT EFFECT. MSHA'S COOPERATIVE ATTITUDE WITH MINE OPERATORS, HOWEVER, IMPEDED REAL REFORM. WHAT WAS SAID AND WHAT WAS DONE WERE VERY DIFFERENT. ACCORDING TO MSHA'S ASSESSMENT FIGURES, THE AVERAGE PENALTY FOR VIOLATION OF THE PART 50 ACCIDENT/INJURY/EMPLOYMENT REPORTING REQUIREMENTS IN THE ENTIRE MINING INDUSTRY (COAL, METAL AND NON-METAL) FOR THE YEARS 1982 THROUGH 1985 WAS $46.37. FOLLOWING THE ANNOUNCEMENTS OF TOUGHER ACTION, PENALTIES FOR PART 50 VIOLATIONS ACTUALLY FELL TO AN AVERAGE OF $30 EACH.

AT BLUE DIAMOND COAL COMPANY'S SCOTIA MINE IN LETCHER COUNTY, KENTUCKY, MSHA INSPECTORS ISSUED 35 CITATIONS FOR

VIOLATIONS OF PART 50.20 (FAILURE TO REPORT AN INJURY) BETWEEN FEBRUARY 15 AND FEBRUARY 21, 1985. ONLY A $20 PENALTY WAS ASSESSED FOR EACH VIOLATION. I BRING THIS EXAMPLE TO YOUR ATTENTION BECAUSE THIS IS THE SAME MINE IN WHICH THERE WAS A DOUBLE DISASTER IN 1976 AND A DEATH BY ELECTROCUTION -- THAT WOULD NOT HAVE OCCURRED IF MSHA HAD ISSUED NECESSARY REGULATIONS -- IN 1986 (SEE BELOW).

IN CONTRAST, THE LABOR DEPARTMENT'S PRACTICE AT OSHA FOR SIMILAR VIOLATIONS IS STARKLY DIFFERENT. ON APRIL 1, 1986, SECRETARY OF LABOR BROCK ISSUED A PRESS RELEASE CONCERNING RECORD KEEPING AT OSHA. HE SAID:

> "WE ARE VERY SERIOUS ABOUT RECORDKEEPING AND WILL NOT TOLERATE IMPROPER REPORTING. TOO MANY THINGS DEPEND ON IT -- INDIVIDUAL COMPANY'S ABILITY TO RECOGNIZE AND CORRECT HAZARDS; OSHA'S ABILITY TO CONCENTRATE ITS RESOURCES IN AREAS WHERE THE MOST DANGERS EXIST; AND ULTIMATELY, THE SAFETY OF WORKERS THEMSELVES."

THAT SAME DAY, OSHA ANNOUNCED PROPOSED PENALTIES OF $1,377,700 IN PENALTIES AGAINST UNION CARBIDE FOR 221 HEALTH AND SAFETY VIOLATIONS. INCLUDED IN THOSE VIOLATIONS WAS FAILURE BY THE COMPANY TO RECORD ACCIDENTS. FIVE MONTHS LATER, ON SEPTEMBER 16, OSHA PROPOSED ANOTHER $90,000 PENALTY AGAINST UNION CARBIDE FOR FAILURE TO RECORD 355 INJURIES AT ONE PLANT AND $10,000 FOR VIOLATIONS AT A SEPARATE PLANT -- FOR FIVE INJURIES THAT INVOLVED EITHER RESTRICTED ACTIVITY OR LOST WORK DAYS.

ON JANUARY 30, 1987, OSHA ANNOUNCED A SETTLEMENT WITH THE CHRYSLER CORPORATION FOR INJURY AND ILLNESS RECORD KEEPING VIOLATIONS. OSHA HAD CITED 182 ALLEGED WILLFUL

VIOLATIONS BETWEEN JANUARY 1985 AND APRIL 1986. THE PENALTY CHRYSLER FINALLY AGREED TO PAY FOR THOSE VIOLATIONS WAS $295,332. IN CONTRAST, THE TOTAL AMOUNT PAID FOR VIOLATIONS OF PART 50 BY ALL COAL, METAL AND NON-METAL OPERATORS IN THE LAST FIVE YEARS WAS HALF OF THE AMOUNT PAID BY CHRYSLER IN THAT ONE SETTLEMENT. MSHA'S FAILURE TO ENFORCE THE REPORTING REQUIREMENTS AT MINES, COMPARED TO THIS SINGLE ACTION, TELLS THE STORY.

OSHA'S ACTION AGAINST CHRYSLER IS NOT AN ISOLATED CASE. THIS SISTER AGENCY OF MSHA, WITH THE ASSISTANCE OF THE BUREAU OF LABOR STATISTICS, IS PERFORMING SYSTEMATIC AUDITS OF EMPLOYERS AND IS ISSUING CITATIONS OF UP TO $5,000 FOR EACH UNRECORDED INJURY OR ILLNESS. MSHA, HOWEVER, IMPOSES A $20 FINE FOR UNREPORTED INJURIES.

NONE OF THIS IS TO SUGGEST THAT OSHA IS HANDLING RECORD KEEPING IN AN EXEMPLARY MANNER; THEY HAVE PROBLEMS OF THEIR OWN. IT IS SIMPLY TO ILLUSTRATE GROSS INCONSISTENCIES IN ENFORCING RECORD KEEPING REQUIREMENTS BETWEEN TWO AGENCIES IN THE SAME DEPARTMENT.

THE TWO AGENCIES USE INJURY RECORDS DIFFERENTLY, WHICH MIGHT EXPLAIN DIFFERENCES IN PENALTIES. OSHA'S LOG OF ILLNESSES AND INJURIES IS EXAMINED BEFORE ROUTINE INSPECTIONS TO DETERMINE WHETHER AN INSPECTION SHOULD CONTINUE. AT MSHA, MINES WITH INJURY RATES ABOVE THE NATIONAL AVERAGE ARE GIVEN ADDITIONAL TRAINING REQUIREMENTS AND ARE SUBJECT TO INCREASED INSPECTIONS. BUT FOR BOTH KINDS OF EMPLOYERS, COMPENSATION INSURANCE CARRIERS COMMONLY GIVE THOSE WITH HIGHER INJURY RATES A HIGHER INSURANCE PREMIUM, PROVIDING AN ECONOMIC INCENTIVE TO UNDER REPORT.

ANOTHER EXAMPLE OF MSHA'S ENFORCEMENT OF REPORTING REQUIREMENTS INVOLVES CONSOL'S DILWORTH MINE. IN JUNE OF 1986, AFTER RECEIVING A COMPLAINT FROM THE UMWA'S LOCAL

UNION HEALTH AND SAFETY COMMITTEE. MSHA INVESTIGATED. THE INVESTIGATION FOUND THREE UNREPORTED INJURIES, TWO OF WHICH INVOLVED WEEKS OF LOST TIME. THE VIOLATIONS WERE ASSESSED AT $20 EACH. A MONTH LATER, A SECOND COMPLAINT BY THE MINERS UNCOVERED TWO MORE UNREPORTED INJURIES, ONE OF WHICH INVOLVED A MINER WHO HAD BEEN UNABLE TO WORK FOR 15 DAYS. AGAIN, THE ASSESSMENT WAS $20 EACH. ONE HAS TO ASK -- WHAT IMPACT DOES A $20 FINE HAVE ON THE NATION'S LARGEST COAL PRODUCERS? THE ANSWER IS OBVIOUS -- NONE.

ON DECEMBER 2, 1986, THE WALL STREET JOURNAL CARRIED A STORY SHOWING THAT THE CONSOLIDATION COAL COMPANY WAS AWARDED MSHA'S SENTINELS OF SAFETY AWARD IN 1985 AT THEIR OSAGE MINE (SEE ATTACHMENT #2). HOW WAS THIS DISTINCTION ACHIEVED? THE COMPANY HAD MINERS USE VACATION AND PERSONAL DAYS FOLLOWING INJURIES IN MINE ACCIDENTS SO THEY WOULD NOT HAVE TO REPORT THEIR LOST-TIME INJURIES. ONE INJURED MINER STATED THAT CONSOL OFFICIALS CALLED SEVERAL TIMES TO CONVINCE HIM NOT TO TAKE COMPENSATED LEAVE (WHICH WOULD HAVE BEEN CHARGED AS LOST DAYS). EVENTUALLY THESE COMPANY OFFICIALS DROVE TO HIS HOUSE TO, AS THE ARTICLE DESCRIBED, "WHEEL AND DEAL". AFTER THAT VISIT AND A PROMISE THAT THE MINER WOULD BE PAID PERSONAL DAYS FOR LOST DAYS, HE RELENTED. FURTHER INVESTIGATIONS HAVE DISCLOSED THAT CONSOL PAID INJURED MINERS AT THE OSAGE MINE FOR DAYS THEY CLEARLY HAD NOT ACCRUED, JUST TO OBTAIN THAT AWARD.

WHEN THEY GET CAUGHT, THESE OPERATORS CRY FOUL AND COMPLAIN ABOUT BEING PENALIZED -- A MERE $20. ACCORDING TO A MARCH 6, 1987 WALL STREET JOURNAL STORY (ATTACHMENT #2), MSHA "IS STUDYING THE POSSIBILITY" OF UP TO $40,000 IN PENALTIES FOR THE OSAGE MINE INCIDENTS. WE SINCERELY HOPE THAT THIS INDICATES A CHANGE OF APPROACH AND NOT MERELY AN EFFORT TO INFLUENCE THESE HEARINGS.

WE BELIEVE THAT UNDERREPORTING OF INJURIES TO MINERS IS EXTENSIVE. WE BELIEVE THAT THE WORST VIOLATORS ARE

SMALL COAL MINES AND THAT MSHA IS DOING NOTHING TO CORRECT THIS ABUSE. FATAL ACCIDENT RATES AT SMALL COAL MINES ARE THE HIGHEST IN THE INDUSTRY AND TWO OR THREE TIMES HIGHER THAN RATES AT LARGER MINES. FATALITIES ARE OBVIOUSLY MORE DIFFICULT THAN INJURIES TO COVER UP. IN 1985, SMALL UNDERGROUND MINES EMPLOYING FEWER THAN 20 MINERS ACCOUNTED FOR APPROXIMATELY 57% OF THE TOTAL UNDERGROUND COAL MINING DEATHS, THOUGH THEY ACCOUNT FOR ONLY 8% OF THE TOTAL EMPLOYMENT.

BECAUSE OF THIS STRONG ASSOCIATION BETWEEN MINE SIZE AND FATALITY RATES, WE EXPECTED NON-FATAL INJURY RATES AT SMALL MINES TO BE HIGHER ALSO. THEY ARE NOT -- AT LEAST AS REPORTED. WE REVIEWED ALL OF MSHA'S AVAILABLE FINAL REPORTS ON FATAL ACCIDENTS AT SMALL (50 OR FEWER WORKERS) MINES FOR 1984, 1985, AND 1986 (THROUGH SEPTEMBER 9). THOSE FATALITY REPORTS INCLUDE THE MINE'S INJURY FREQUENCY RATE FOR THE LAST QUARTER PRIOR TO THE FATAL ACCIDENTS. OF THE MORE THAN 120 DEATHS IN THIS CATEGORY, 107 REPORTS WERE AVAILABLE. REPORTS ON 70 OF THOSE MINING DEATHS SHOWED NO INJURIES AND 17 NOTED THAT THE INFORMATION WAS NOT AVAILABLE OR, FOR OTHER REASONS, NOT INCLUDED. IT IS HARD TO BELIEVE THAT 65% OF THESE SMALL MINES HAD MINERS KILLED, YET HAD NO NON FATAL INJURIES.

OUR BELIEF IS CONSISTENT WITH THE 1982 FINDINGS OF THE NATIONAL RESEARCH COUNCIL, AS REPORTED IN _TOWARD SAFER UNDERGROUND COAL MINES_. THE SMALL MINES THAT DO REPORT ACCIDENTS REFLECT THE ACTUAL STATE OF THE INDUSTRY MORE ACCURATELY THAN MSHA'S OVERALL STATISTICS.

ON FEBRUARY 28, 1986, MSHA'S REPORT ON THE ACCURACY OF PART 50 INDUSTRY STATISTICS CITED A 13% UNDERREPORTING RATE. A GAO REPORT PROVIDED TO THE SENATE ON SEPTEMBER 25, 1986, SHOWED THE CASE WAS WORSE.

AS LONG AS MSHA TREATS ACCIDENT/INJURY REPORTING CASUALLY AND USES THE UNDERREPORTED FIGURES AS BRAGGING POINTS, WE CAN EXPECT NO IMPROVEMENT IN HEALTH AND SAFETY. WE NEED ACCURATE DATA AS A BASIS FOR SOUND POLICY AND WE NEED AN AGENCY THAT WILL ENFORCE REPORTING REQUIREMENTS PROPERLY. IT SHOULD BE NOTED THAT MSHA'S SELF-INTEREST IS SERVED IN REPORTING DECLINING ACCIDENT/INJURY RATES -- SUCH DECLINES INDICATE THAT THE AGENCY'S PROGRAM IS WORKING. IN THIS CASE, WE BELIEVE IT HIDES THE UNWANTED TRUTH.

THE PROBLEM OF UNDERREPORTING OF MINE ACCIDENTS IS NOT LIMITED TO NON-FATAL INJURIES. IT ALSO EXISTS WITH MINING DEATHS. AN INVESTIGATIVE REPORT CARRIED IN THE SEPTEMBER 1986 ISSUE OF THE UMW JOURNAL ON THE DEATH OF A COAL MINER AT A VIRGINIA MINE OPERATED BY CONSOLIDATION COAL COMPANY HIGHLIGHTED SUCH A CASE. THE ARTICLE REPORTED THAT BRUCE BALLARD, A 25-YEAR OLD MINER IN EXCELLENT HEALTH, WAS FOUND LYING DEAD BESIDE THE ROOF BOLTING MACHINE HE HAD OPERATED THAT SHIFT IN THE COMPANY'S BUCHANAN NO. 1 MINE IN BUCHANAN COUNTY, VIRGINIA.

COMPANY OFFICIALS ASSERTED THAT BALLARD DIED FROM A HEART ATTACK. A CORONER'S EXAMINATION AND AN AUTOPSY CONDUCTED BY THE STATE MEDICAL EXAMINER'S OFFICE, HOWEVER, FOUND THAT THE CAUSE OF DEATH WAS ELECTROCUTION. BEFORE THE MEDICAL EXAMINATION WAS COMPLETE, THE COMPANY INFORMED LOCAL MSHA OFFICES BY TELEGRAM, TELEPHONE AND MAILGRAM THAT BALLARD'S DEATH "WAS NOT DUE TO ANY MINING-RELATED ACCIDENT." THE MSHA INSPECTOR SENT TO INVESTIGATE WAS ORDERED BY HIS SUPERVISOR NOT TO CONTROL THE EVIDENCE AT THE SCENE, THOUGH THIS IS ROUTINE PROCEDURE IN MSHA INVESTIGATIONS OF FATALITIES. THE QUESTION WE WOULD ASK IS: WHY WOULD THEY NOT WANT TO CONTROL THE EVIDENCE?

COAL COMPANY OFFICIALS CHALLENGED THE MEDICAL OPINIONS OF BOTH THE LOCAL CORONER AND THE ASSISTANT STATE MEDICAL EXAMINER AND HAD THE ARMED FORCES INSTITUTE OF PATHOLOGY

(AFIP) CONDUCT AN AUTOPSY CASE REVIEW. THE AFIP REVIEW CONCLUDED THAT, ALTHOUGH CIRCUMSTANTIAL EVIDENCE FAVORED ELECTROCUTION, THE CAUSE OF DEATH WAS "UNDETERMINED" BECAUSE NO EQUIPMENT MALFUNCTION HAD BEEN FOUND. OF COURSE NO MALFUNCTION WAS DISCOVERED -- A FULL INVESTIGATION NEVER TOOK PLACE.

WITH THAT CASE REVIEW IN HAND, CONSOL APPEALED TO THE MSHA FATALITY REVIEW COMMITTEE TO OVERTURN THE BALLARD FATALITY RULING. THE MSHA REVIEW COMMITTEE IS A LITTLE KNOWN COMMITTEE MADE UP OF THREE TOP MSHA OFFICIALS. THE MSHA DISTRICT MANAGER ARGUED THE COMPANY'S CASE, RELYING ON THE AFIP REPORT, WHICH HE REFERRED TO AS A "SECOND AUTOPSY," ALTHOUGH NO SUCH AUTOPSY WAS PERFORMED. THE COMMITTEE ACCEPTED THE DISTRICT MANAGER'S ARGUMENTS AND VOTED UNANIMOUSLY TO OVERTURN THE FATALITY RULING. IN THEIR WRITTEN DECISIONS, TWO OF THE THREE COMMITTEE MEMBERS REFERRED TO THE NONEXISTENT "SECOND AUTOPSY." AN INDEPENDENT INVESTIGATION'S FINDINGS ARE APPENDED (SEE ATTACHMENT #2).

## CRIMINAL PROSECUTIONS UNDER THE MINE ACT

LAST SUMMER, WE OBTAINED A LIST OF CASES THAT MSHA HAD REFERRED TO THE DEPARTMENT OF JUSTICE FOR PROSECUTION. THESE INVOLVED OPERATORS WHO HAD COMMITTED FLAGRANT VIOLATIONS AND WERE BEING PROSECUTED UNDER SECTION 110 OF THE MINE ACT. THIRTY-TWO CASES, ENCOMPASSING THE PERIOD BETWEEN JULY 1979 AND MARCH 1985, WERE LISTED. OF THOSE 32 CASES, 23 PROSECUTIONS RESULTED FROM INVESTIGATIONS BY ONE MSHA OFFICE, DISTRICT 5 IN NORTON, VIRGINIA. THERE WERE FOUR CASES FROM MSHA DISTRICT 7, TWO FROM MSHA DISTRICT 4, ONE EACH FROM DISTRICTS 6, 8 AND 10. THERE WERE NO CASES ON RECORD FOR THOSE YEARS FROM MSHA'S DISTRICTS 1, 2, 3 AND 9.

THE NORTON OFFICE WAS VIRTUALLY THE ONLY MSHA OFFICE TO INITIATE INVESTIGATIONS ON THE BASIS OF A REVIEW OF THE CITATIONS OR CLOSURE ORDERS THAT HAD BEEN ISSUED TO AN OPERATOR. INVESTIGATIONS FROM THE OTHER MSHA OFFICES LISTED IN THE REPORT WERE ALMOST ALWAYS TRIGGERED BY EVENTS OTHER THAN MSHA'S OWN ANALYSIS, SUCH AS AN EXPLOSION OR FATALITY OR, SOMETIMES, REPORTS FROM EMPLOYEES.

WHY DOES THE NORTON OFFICE STAND OUT? THERE IS NO REASON TO PRESUME THAT VIRGINIA COAL OPERATORS ARE MORE PRONE THAN OTHER OPERATORS TO COMMIT KNOWING OR WILLFUL VIOLATIONS OF THE ACT. A MORE PLAUSIBLE EXPLANATION IS THAT MSHA'S OTHER OFFICES ARE SIMPLY FAILING TO NOTICE THE PIECES OF THE PUZZLE THAT, WHEN PUT TOGETHER, POINT TO POSSIBLE CRIMINAL VIOLATIONS. WITH THE EXCEPTION OF THE NORTON OFFICE, IT APPEARS THAT MSHA IS SIMPLY SITTING BACK AND WAITING FOR A FATALITY, EXPLOSION, OR EMPLOYEE REPORT BEFORE INSTIGATING A SPECIAL INVESTIGATION. OTHER MSHA DISTRICTS DO NOT APPEAR TO BE TAKING A HARD LOOK AT THE KINDS AND NUMBERS OF CITATIONS OR ORDERS A PARTICULAR OPERATOR MIGHT BE RECEIVING. ARE THEY FAILING TO DETECT AND PURSUE POSSIBLE CRIMINAL VIOLATIONS? IF SO, WHY?

THE ANSWER MIGHT BE FOUND AT MSHA HEADQUARTERS. IN A MEMO DATED DECEMBER 19, 1985, DAVID ZEGEER, THEN ASSISTANT SECRETARY OF LABOR FOR MINE SAFETY AND HEALTH, COMPLAINED TO THE MSHA ADMINISTRATOR OF COAL ENFORCEMENT ABOUT THE SPECIAL INVESTIGATIONS, EXPRESSING THE VIEW THAT PEABODY COAL COMPANY HAD BEEN UNFAIRLY INDICTED IN CONNECTION WITH THE DEATH OF A FOREMAN CAUGHT IN A ROCK FALL.

RELYING IN LARGE PART UPON AN ARTICLE IN COAL AGE MAGAZINE, MR. ZEGEER, CONCLUDED THAT THE INDICTMENT "WAS STRICTLY A JUDGEMENT CALL..." HE EXPRESSED CONCERN THAT SUCH INDICTMENTS WOULD INHIBIT THE ABILITY OF MINING PERSONNEL "TO MAKE THE JUDGEMENTAL DECISIONS SO NECESSARY IN

THE DAY-TO-DAY SITUATIONS WHICH THEY ENCOUNTER." THE MEMO URGED JOSEPH LAMONICA (THE OFFICIAL THEN IN CHARGE OF COAL MINE SAFETY) TO FORMALIZE REVIEW PROCEDURES FOR POSSIBLE CRIMINAL ACTIONS "WHICH WILL PRECLUDE SITUATIONS LIKE THIS IN THE FUTURE."

SIX MONTHS AFTER THIS LETTER, IN JUNE OF 1986, PEABODY COAL COMPANY PLEADED GUILTY IN A U.S. DISTRICT COURT ON TWO OF THE CHARGES AND WAS SENTENCED TO PAY $25,000 ON EACH COUNT. IF MR. ZEGEER HAD HAD HIS WAY, PEABODY WOULD HAVE GOTTEN OFF SCOT-FREE.

THE UMWA REVIEWED THE FATAL ACCIDENTS IN EACH MSHA DISTRICT AND COMPARED THE CASES THAT WERE CRIMINALLY PROSECUTED UNDER SECTION 110 OF THE MINE ACT. FROM 1978 TO 1986, THERE WERE A TOTAL OF 130 SURFACE AND UNDERGROUND COAL MINING FATALITIES IN DISTRICT 5, MAKING IT THE THIRD HIGHEST IN THE NATION. IN DISTRICT 7 THERE WERE 196 FATALITIES, RANKING FIRST AND IN DISTRICT 4 THERE WERE 162, RANKING SECOND. HOWEVER, THERE WERE FEW CRIMINAL PROSECUTIONS IN EACH OF THESE DISTRICTS.

BETWEEN 1978 AND 1986, THERE WERE 311 MINING DEATHS AT SURFACE AND UNDERGROUND COAL MINES IN MSHA DISTRICTS 1, 2, 3 AND 9 COMBINED. ACCORDING TO THE REPORTS PROVIDED TO US ON CRIMINAL PROSECUTIONS, THERE WERE NO CASES PROSECUTED UNDER SECTION 110 OF THE ACT IN THESE PARTICULAR DISTRICTS. IN MSHA DISTRICT 9, WHICH RANKED FOURTH IN MINE DEATHS AMONG MSHA DISTRICTS, THERE WERE A TOTAL OF 128 FATALITIES DURING THIS PERIOD WITHOUT A SINGLE CRIMINAL PROSECUTION:

THESE STRIKING FIGURES INDICATE THAT MSHA'S POLICY IS NOT TO PURSUE CRIMINAL PROSECUTIONS UNDER SECTION 110 OF THE MINE ACT. THAT IS THE ONLY CONCLUSION THAT CAN BE DRAWN. THE AGENCY'S NEGLECT IN THIS AREA MUST BE CORRECTED. EFFECTIVE USE OF THE CRIMINAL PROSECUTION PROVISIONS MUST BEGIN IMMEDIATELY.

## MSHA ENFORCEMENT ON THE DISTRICT LEVEL

EXAMINATIONS OF MSHA DISTRICT OFFICIALS' ACTIONS -- OR LACK THEREOF -- ALSO PROVED SIGNIFICANT.

FOR EXAMPLE, IN 1984 CABLE NEWS NETWORK (CNN) CARRIED A FOUR-PART INVESTIGATIVE PROGRAM ON THE FEDERAL MINE SAFETY AND HEALTH ADMINISTRATION. THAT PROGRAM INVESTIGATED ENFORCEMENT PRACTICES IN MSHA'S DISTRICT 9, WHICH COVERS THE WESTERN UNITED STATES. IT FOCUSED PARTICULARLY ON MSHA DISTRICT 9 MANAGER JOHN BARTON AND THE MINING PLANS APPROVED BY HIS OFFICE.

CNN INTERVIEWED JEANETTE MONTOYA, THE WIDOWED MOTHER OF THREE CHILDREN. MRS. MONTOYA TOLD HOW HER HUSBAND, PAUL, COMPLAINED TO HER ABOUT THE UNSAFE CONDITIONS AT THE RINEAU NO. 2 MINE IN COLORADO WHERE HE WORKED. ACCORDING TO MRS. MONTOYA, HE SAID THE COAL WAS ALWAYS FALLING DOWN AND THAT THERE WAS NO SUPPORT AT ALL (FOR THE ROOF). ON JANUARY 30, 1981, A ROOF FALL OCCURRED AT THE MINE, CRUSHING TO DEATH PAUL MONTOYA AND HIS BUDDY, STEVE SCHLARB.

RECORDS INDICATE THAT MSHA OFFICIALS WERE AWARE OF DANGEROUS ROOF CONDITIONS AT THE MINE AND FAILED TO TAKE ACTION. ON JUNE 20, 1980, COAL MINE INSPECTOR ARCHIE VIRGIL WROTE THE MSHA DISTRICT 9 SUB-DISTRICT MANAGER AND THE MSHA DISTRICT 9 ENGINEERING COORDINATOR, NOTIFYING THEM THAT THE ROOF CONTROL PLAN SHOULD BE REVISED TO REQUIRE A FULL ROOF SUPPORT SYSTEM. VIRGIL NOTED THAT MSHA INSPECTOR E. L. KNITTLE HAD ALSO SUGGESTED THIS.

ON JULY 7, 1980, JOHN MILLER, SUPERVISORY MINING ENGINEER FOR MSHA DISTRICT 9, WROTE TO THE MSHA DISTRICT 9 COORDINATING ENGINEER. HE NOTED SEVERE ROOF CONDITIONS IN THE MINE - IN NEARLY ALL THE ACTIVE SECTIONS WHERE MINERS WERE REQUIRED TO WORK. SEVERAL FALLS HAD OCCURRED IN THE

FACE AREAS. HE ALSO NOTED MSHA OFFICIAL FREEMAN STAPLES' STATEMENT TO THE MINE OPERATOR THAT, "IF HE WERE OPERATING THE MINE, HE WOULD ISSUE AN ORDER AND SHUT DOWN THE SECTION" BECAUSE OF ROOF CONDITIONS.

IN TOTAL DISREGARD OF THESE FINDINGS, JOHN BARTON, WHO IS RESPONSIBLE FOR APPROVALS OF THE ROOF CONTROL PLANS, STATED THAT REVIEWS OF THE ROOF CONDITIONS INDICATED THAT THE RINEAU NO. 2 MINE ROOF CONTROL PLAN WAS ADEQUATE. WHEN ASKED TO PRODUCE RECORDS TO SUPPORT THAT POSITION, ACCORDING TO CNN, HE COULD NOT.

THE INVESTIGATION OF THE TWO MINERS' DEATHS SHOWED THAT THERE WERE VIRTUALLY NO ROOF SUPPORTS. THERE WERE JUST A FEW POSTS IN THE AREA OF THE ACCIDENT, AS PERMITTED BY THE PLAN APPROVED BY THE MSHA DISTRICT MANAGER. SIGNIFICANTLY, THE MSHA REPORT FOUND THAT THE ACCIDENT OCCURRED BECAUSE THE METHOD USED TO SUPPORT THE ROOF WAS INADEQUATE FOR THE PREVAILING CONDITIONS.

THIS IS NOT THE ONLY CASE IN WHICH AN INFERIOR ROOF CONTROL PLAN THAT ENHANCED PRODUCTION BUT FAILED TO PROTECT MINERS WAS APPROVED BY DISTRICT 9. A SIMILAR CASE OCCURRED AT THE EAGLE NO. 2 MINE IN COLORADO. IN JANUARY OF 1983, A ROOF FALL OCCURRED AT THAT MINE KILLING A FOREMAN. THE ROOF CONTROL PLAN WAS SIMILAR THAT AT RINEAU NO. 2 -- A FEW POSTS, WITH MASSIVE AREAS OF THE ROOF TOTALLY UNSUPPORTED.

FOLLOWING INVESTIGATIONS OF THE ROOF CONDITIONS AFTER THE MINING DEATH, THE UMWA DEMANDED THAT THE AGENCY CHANGE THE ROOF CONTROL PLAN TO REQUIRE FULL OVERHEAD BOLTING TO PREVENT FURTHER ACCIDENTS. MSHA DISTRICT 9 MANAGER BARTON REFUSED, CITING GOOD ROOF CONDITIONS. HE CLAIMED THAT ONLY TWO ROOF FALLS OCCURRED AT THE MINE IN THE YEARS IT WAS OPEN. HOWEVER, UMWA INVESTIGATORS, IN REVIEWING COMPANY

ROOF FALL RECORDS (ALSO ACCESSIBLE TO MSHA), FOUND THAT 45 UNINTENTIONAL ROOF FALLS HAD OCCURRED BETWEEN DECEMBER 1975 AND JANUARY 1983.

UMWA REPRESENTATIVES MET WITH THE DISTRICT MANAGER AND NATIONAL MSHA OFFICIALS AND SENT CORRESPONDENCE ON CONDITIONS AT THE MINE, OBJECTING TO THE INFERIOR PLAN APPROVED BY BARTON. NO ONE WOULD LISTEN.

IN DECEMBER OF 1984, ANOTHER ROOF FALL ACCIDENT OCCURRED, KILLING ANOTHER MINER. ONLY THEN DID MSHA REQUIRE A FULL OVERHEAD BOLTING PLAN. THERE ARE OTHER CASES OF SIMILAR PLAN APPROVALS IN MSHA DISTRICT 9 THAT HAVE BEEN IMPLICATED IN MINING DEATHS. THE WILBERG MINE IN UTAH IS ONE IN WHICH AN INEFFECTIVE VENTILATION AND ESCAPEWAY PLAN WAS APPROVED. TWENTY-SEVEN MINERS DIED. THE MSHA DISTRICT 9 OFFICE APPROVED A WAIVER FOR WILBERG THAT ALLOWED THE COMPANY TO MINE WITH RETURN PASSAGEWAYS OBSTRUCTED IN THE SECTION WHERE THE MINERS WERE WORKING. BY LAW, THE DISTRICT MANAGER HAD NO AUTHORITY TO ISSUE SUCH A WAIVER.

VERBAL WAIVERS ALSO HAVE BEEN AN ISSUE IN THAT PARTICULAR DISTRICT. MSHA ISSUED A VERBAL WAIVER TO THE OPERATOR OF THE COTTONWOOD MINE (ALSO THE OPERATOR OF THE WILBERG MINE) IN JANUARY OF 1987. IN THIS CASE, VERBAL APPROVAL WAS GIVEN TO MINE AN AREA WITH ONLY ONE ENTRY -- WITHOUT AN EXAMINATION OF THE CONDITIONS IN THE AREA.

THERE ARE NUMEROUS CASES IN THAT DISTRICT IN WHICH MSHA'S ENFORCEMENT OF THE MINE ACT HAS FAILED TO ENFORCE THE LAW. A PARTICULAR PROBLEM WITHIN MSHA IS THE FAILURE TO INVESTIGATE MINING CONDITIONS PRIOR TO PLAN APPROVALS. IN MSHA DISTRICT 9 THE DISTRICT MANAGER FAILED TO FOLLOW ADVICE ABOUT CONDITIONS BEFORE APPROVING PLANS. IN MANY DISTRICTS THERE OFTEN IS NO INVESTIGATION TO DETERMINE PLAN NEEDS. IT IS NOT SURPRISING, THEREFORE, THAT SINCE 1980

OVER 100 COAL MINERS HAVE BEEN KILLED IN MSHA DISTRICT 9. WITH ONLY ABOUT 4 OR 5% OF AMERICA'S UNDERGROUND MINERS, THE DISTRICT HAS SUFFERED ALMOST 14% OF THE FATALITIES AT UNDERGROUND MINES -- FULLY THREE TIMES HIGHER THAN WOULD BE EXPECTED. THE OBVIOUS CONCLUSION IS THAT DISTRICT 9'S MANAGEMENT IS NOT DOING ITS JOB. HOWEVER, PROBLEMS WITH MANAGEMENT ARE NOT LIMITED TO THIS DISTRICT.

## SAFETY PROBLEMS AT SMALL COAL MINES

OF THE COAL MINERS ABANDONED AND IGNORED BY THOSE RESPONSIBLE FOR ENFORCING THE MINE ACT, NONE HAVE MET NEGLECT MORE THAN THOSE WORKING AT SMALL MINES. THE HIGHEST DEATH RATES IN THE COAL INDUSTRY EXIST AT SMALL COAL MINES.

IN JULY OF 1982, THE NATIONAL RESEARCH COUNCIL ISSUED ITS REPORT, TOWARD SAFER UNDERGROUND COAL MINES, DEVELOPED IN RESPONSE TO THE RECOMMENDATION OF THE PRESIDENT'S COMMISSION ON COAL. THAT REPORT FOUND THAT THE FATALITY RATES IN MINES WITH 50 OR FEWER EMPLOYEES IS NEARLY THREE TIMES THAT OF MINES WITH OVER 250 EMPLOYEES AND ABOUT TWICE THAT OF INTERMEDIATE MINES WITH 51 - 250 EMPLOYEES. THE REPORT REVIEWED INFORMATION ON MINE FATALITIES BACK TO 1969. ALTHOUGH DAVID ZEGEER, FORMER ASSISTANT SECRETARY OF LABOR, SERVED ON THE COMMITTEE THAT MADE THOSE FINDINGS, LITTLE WAS DONE TO REMEDY THE PROBLEM UNCOVERED.

A SECOND STUDY WAS COMMISSIONED BY THE U. S. BUREAU OF MINES TO TAKE A CLOSER LOOK AT THIS SERIOUS PROBLEM. THIS REPORT, ENTITLED FATALITIES IN SMALL COAL MINES (1985), REACHED THE SAME BASIC CONCLUSION.

DURING THE PAST SEVEN YEARS (1980 - 1986), AT LEAST 320 MINERS HAVE BEEN KILLED AT MINES EMPLOYING 50 OR FEWER EMPLOYEES. 209 OF THOSE DEATHS WERE AT UNDERGROUND MINES

AND 111 WERE AT SURFACE MINES. IN 1985, 57% OF ALL UNDERGROUND FATALITIES OCCURRED AT MINES EMPLOYING FEWER THAN 20 MINERS. YET THESE MINES ACCOUNTED ONLY FOR 8% OF HOURS WORKED. THE DIFFERENCE IN FATALITY RATES BETWEEN SMALL AND LARGE MINES IS NOT DUE TO ANY CAUSES UNIQUE TO THESE MINES. MINERS DIE FROM THE SAME CAUSES AT SMALL MINES AS THEY DO IN LARGE MINES.

WHAT HAS MSHA DONE? AS OPPOSED TO STRICT ENFORCEMENT OF THE MINE ACT, THE AGENCY HAS CHOSEN TO INVOKE A FRATERNAL AND SEE NO EVIL APPROACH TOWARD SMALL MINE OPERATORS. DESPITE THE ATROCIOUS CONDITIONS AND ACCIDENT RECORDS AT SMALL MINES MSHA'S ONLY RECOMMENDATION IN FATALITIES IN SMALL COAL MINES WAS TO INCREASE MINERS' TRAINING. THIS CAN ONLY BE CONSIDERED IRRESPONSIBLE.

OVER THE YEARS, THE UMWA HAS SPENT CONSIDERABLE TIME ANALYZING THE HEALTH AND SAFETY CONDITIONS AT SMALL MINES. WE HAVE INSPECTED SMALL MINES AND REVIEWED THE REPORTS ON FATAL ACCIDENTS TO DETERMINE CAUSES AND PATTERNS. THROUGH FREQUENT CORRESPONDENCE AND MEETINGS WITH THE AGENCY AND DEPARTMENT OF LABOR OFFICIALS, WE HAVE FORWARDED OUR FINDINGS TO THEM. THE GENERAL PROBLEMS CAN BE DESCRIBED AS FOLLOWS.

OPERATORS OF SMALL MINES ARE NOT INVESTING THE NECESSARY CAPITAL TO PROTECT MINERS. MINING PLANS THAT DO NOT PROTECT MINERS' LIVES AND HEALTH ARE USED, AND THOSE INFERIOR PLANS ARE BEING APPROVED BY THE GOVERNMENT'S ENFORCEMENT AGENCY. MINE OPERATORS ARE NOT COMPLYING WITH THE MANDATORY HEALTH AND SAFETY STANDARDS. MSHA IS NOT ENFORCING THE MINE LAWS EFFECTIVELY. CHANGES IN THE STANDARDS THAT THE AGENCY HAS PURSUED IGNORE THE PROBLEMS AT SMALL MINES. MINERS ARE ALSO BEING INTIMIDATED AT THESE MINES.

MANY SMALL MINES ARE RUN ON SUBCONTRACTS FROM LARGER OPERATORS. IN THIS WAY, THE LARGER OPERATORS SHIELD THEMSELVES FROM LIABILITY BY PASSING IT TO A SMALLER OPERATOR WORKING WITHIN FIXED COSTS AND WITHOUT THE CAPITAL RESOURCES AVAILABLE TO THE OPERATOR WHO LET THE CONTRACT. THE REASONS FOR SUBCONTRACTING ARE PRIMARILY ECONOMIC, BUT IT IS A PRACTICE THAT SUSTAINS A LARGE NUMBER OF UNSAFE SMALL MINES.

THE LARGE OPERATORS FARM OUT THEIR OPERATIONS, AVOIDING ALL THE SOCIAL AND ENVIRONMENTAL COSTS. OFTEN, THEY IMPOSE CONTROLS ON THE SUBCONTRACTORS, INCLUDING REQUIRING THEM TO SELL ALL COAL TO THEM, SETTING PRICES, AND PROVIDING FOR SHORT TERM TERMINATION OF THE AGREEMENT IN ORDER TO REGAIN CONTROL ALMOST IMMEDIATELY. THE ORIGINAL OPERATOR REAPS ALL THE BENEFIT WHILE EVADING RESPONSIBILITY.

SOME OF THESE SMALL MINES ARE NOT ONLY UNSAFE, THEIR OPERATORS OFTEN SCOFF AT THE LAWS IN OTHER WAYS. THE GENERAL ACCOUNTING OFFICE RECENTLY REPORTED THAT PAYMENTS INTO THE ABANDONED MINE LANDS FUND FROM EASTERN KENTUCKY -- WHERE THERE IS THE LARGEST CONCENTRATION OF SMALL MINES -- WAS PRACTICALLY NONEXISTENT. SINCE PAYMENTS INTO THE BLACK LUNG DISABILITY TRUST FUND ARE LARGER THAN TO THIS FUND, AND SINCE AUDITING OF PAYMENTS INTO THE BLACK LUNG FUND IS VIRTUALLY NONEXISTENT, WE BELIEVE PAYMENTS INTO THE BLACK LUNG FUND WERE NOT BEING MADE EITHER.

FURTHER, IT IS LIKELY THAT MANY OTHER PAYMENTS ARE NEVER MADE, INCLUDING WORKERS' COMPENSATION TAXES, UNEMPLOYMENT TAXES AND RECLAMATION FUND PAYMENTS. IF THEY ARE EVADING THEIR FINANCIAL RESPONSIBILITIES, THE ENORMOUS SOCIAL COSTS SIMPLY BECOME AN ADDITIONAL BURDEN ON SOCIETY AND ON THOSE RESPONSIBLE OPERATORS WHO ATTEMPT TO REMAIN WITHIN THE LAW.

MANY OF THESE SMALL MINES ARE LOCATED IN ECONOMICALLY-DEPRESSED AREAS WHERE MANY EXPERIENCED MINERS HAVE SUFFERED SEVERELY FROM LONG-TERM UNEMPLOYMENT. THOSE EMPLOYED BECOME EASY TARGETS FOR INTIMIDATION BY COMPANIES.

ROOF FALLS ARE A MAJOR CAUSE OF DEATHS. MINING PLANS THAT DO NOT REQUIRE THE FACE MACHINE OPERATOR TO BE PROTECTED WITH A CAB OR CANOPY ARE IMPLEMENTED AT SOME OF THOSE SMALL MINES. THEN ENTRIES ARE ALLOWED TO BE MINED UP TO 30 FEET WIDE OR MORE. MINERS ARE NOT PROTECTED BY FULL OVERHEAD SUPPORT AND, IN SOME CASES, ARE EVEN REQUIRED TO KNOCK OUT THE TEMPORARY SUPPORTS (POSTS) AS THEY MINE AT THE FACE. MINERS ARE NOT PROTECTED BY AUTOMATIC TEMPORARY ROOF SUPPORT (ATRS) SYSTEMS WHILE INSTALLING ROOF BOLTS AT SOME MINES. (ATRS SYSTEMS ARE DESIGNED TO PROVIDE TEMPORARY PROTECTION WHILE PERMANENT ROOF SUPPORTS ARE BEING INSTALLED.)

IF ANY OF THESE CONDITIONS COME INTO PLAY AT A LARGE MINE, THE MINE USUALLY WOULD BE SHUT DOWN IMMEDIATELY. HOWEVER, SMALL MINES ARE NOT ONLY PERMITTED TO OPERATE IN THIS MANNER, THEY ARE APPROVED TO OPERATE THIS WAY. THAT MUST BE STOPPED IF MINERS ARE TO BE PROTECTED.

THE MULTIPLE FATALITY ACCIDENT THAT OCCURRED AT A MINE IN HARLAN COUNTY, KENTUCKY, ON SEPTEMBER 12, 1984, PROVIDED A NOTABLE EXAMPLE OF THE PROBLEMS AT SMALL MINES. FOURTEEN MINERS WERE EMPLOYED IN THAT SECTION OF THE MINE. THE AREA OUTBY THE FALL HAD BEEN MINED IN SUCH A MANNER THAT IT WAS VERY DIFFICULT TO LOCATE BREAK-THROUGHS AND ENTRIES. THE FALL COMPLETELY COVERED WHAT APPEARED TO BE THREE ENTRIES APPROXIMATELY 100 FEET IN LENGTH. THE ROOF SUPPORT PLAN CALLED FOR UP TO 30 FOOT ENTRY WIDTHS. THE MINE HAD ONLY A FEW ROOF BOLTS INSTALLED OUTBY THE WORKING SECTION. TIMBERS WERE THE PRIMARY ROOF SUPPORT.

THE INVESTIGATION AND HEARING REVEALED THE FOLLOWING:

1. THE MINERS WERE IN FEAR OF LOSING THEIR JOBS IF THEY REPORTED SAFETY PROBLEMS;
2. THE COMPANY WAS REMOVING PILLARS WITHOUT AN APPROVED PLAN;
3. THE MINERS DID NOT HAVE, NOR DID MANAGEMENT GIVE THEM, ANYTHING TO TEST THE MINE ROOF;
4. NO TRAINING HAD BEEN GIVEN TO THE MINERS ON VENTILATION, ESCAPEWAYS, AND ROOF CONTROL AT THE MINE SITE;
5. NEW MINERS WERE NOT GIVEN ANY INSTRUCTION OR TRAINING BEFORE BEING SENT UNDERGROUND;
6. THE MINERS TRAVELLED IN AND OUT OF THE MINE ON A BELT THAT DID NOT HAVE APPROPRIATE SAFETY DEVICES;
7. THE PRE-SHIFT EXAMINATIONS FOR UNSAFE CONDITIONS WERE NOT BEING MADE AND REQUIRED BOOKS AND RECORDS WERE NOT BEING COUNTERSIGNED BY THE SUPERINTENDENT;
8. THE MINERS HAD TO SET WHAT FEW TIMBERS THEY HAD TO HOLD THE MINE ROOF BY HITTING WEDGES WITH THEIR HAND OR CAP BOARDS;
9. NO SAW WAS KEPT TO CUT TIMBERS TO THE RIGHT LENGTH;
10. THERE WERE NO FIRST AID SUPPLIES AND NO STRETCHER;

11. MEN ON THE SERVICE CREW WANTED TO BRING TIMBERS IN, BUT THE BOSS TOLD THEM NOT TO DO SO. THEY NEVER HAD ADEQUATE TIMBERS FOR SUPPORTING ROOF. THEY OFTEN HAD TO RECOVER TIMBERS FROM OLD WORKS AND WATER HOLES TO GET WHAT THEY COULD;

12. MINERS WERE SENT INTO AREAS WHERE PILLARS HAD BEEN REMOVED COMPLETELY TO RECOVER TIMBERS AND BELT STRUCTURE;

13. THE FAN WAS OFTEN REVERSED, CHANGING THE AIR, WITHOUT NOTIFYING THE MINERS;

14. THE FOREMEN DID NOT TAKE AIR READINGS OR METHANE READINGS WHILE THE MEN WERE MINING COAL; AND

15. CRACKS IN THE ROOF WERE OBSERVED IN THE AREA MINED ON THE DAY OF THE ACCIDENT, BUT NO ACTION WAS TAKEN.

THE LIST GOES ON AND ON.

MINERS TESTIFYING AT THE HEARING, WHEN ASKED WHAT WOULD HELP PREVENT THIS TYPE OF ACCIDENT, CITED THE NEED FOR MORE AND STRONGER INSPECTIONS. THE QUESTION THAT BEGS TO BE ANSWERED IN THIS CASE IS: HOW DID THIS OPERATOR MINE COAL IN THIS MANNER AND AVOID ENFORCEMENT ACTION BY MSHA?

ANOTHER EXAMPLE IS A FATAL ROOF FALL ACCIDENT THAT OCCURRED IN 1984 AT J.&S. COAL COMPANY'S NO. 4 MINE IN KNOX COUNTY, KENTUCKY. THIS MINE HAD 12 EMPLOYEES AND PRODUCED APPROXIMATELY 100 TONS OF COAL PER DAY. FOUR MINERS WERE WORKING IN THE SECTION OF THE MINE WHEN THE FALL OCCURRED. THE SECTION BOSS LEFT THE MINE SHORTLY BEFORE THE ACCIDENT.

LEAVING THE FOUR MINERS WITHOUT THE REQUIRED SUPERVISION. THE AREA WHERE THEY WERE WORKING WAS UNSUPPORTED FOR THE WIDTH OF THE ENTRY AND A DISTANCE OF APPROXIMATELY 65 FEET. THE ROOF FELL, KILLING ONE OF THE MINERS. MIRACULOUSLY, THREE SURVIVED. THE FALL MEASURED 30 FEET WIDE FOR A DISTANCE OF 50 FEET.

IN ANOTHER EXAMPLE, ON AUGUST 15, 1985, A FATAL COAL MINE EXPLOSIVE ACCIDENT OCCURRED AT THE R.&R. COAL COMPANY'S NO. 3 MINE IN WOODBINE, KENTUCKY AND THREE MINERS WERE ASPHYXIATED BY CARBON MONOXIDE POISONING. IT MAY SEEM AS THOUGH A SINGLE HAZARD EXISTED AND THREE MINERS WERE UNFORTUNATELY CAUGHT BY IT. THAT COULD NOT BE FURTHER FROM THE TRUTH.

LIKE MANY OF THE SMALL MINE DEATH TRAPS, THIS WAS A DISASTER WAITING TO HAPPEN.

THE INVESTIGATION REPORTS FILED BY MSHA DISCLOSED SEVERAL VIOLATIONS, INCLUDING THE FOLLOWING:

1. AN IMMINENT DANGER EXISTED DUE TO THE QUANTITY AND QUALITY OF AIR REACHING THE LAST OPEN CROSSCUT IN THE NO. 4 ENTRY. THERE WAS NO PERCEPTIBLE MOVEMENT OF AIR AND ONLY 18% OF OXYGEN;

2. NO LINE BRATTICE OR OTHER APPROVED DEVICE WAS PROVIDED TO VENTILATE THE WORKING FACES ADEQUATELY;

3. PRE-SHIFT EXAMINATIONS OF THE MINE BY A CERTIFIED PERSON HAD NOT BEEN CONDUCTED OR RECORDED IN THE PRE-SHIFT BOOK SINCE JULY 1985;

4. ON-SHIFT EXAMINATIONS FOR HAZARDOUS CONDITIONS BY CERTIFIED PERSONS WERE NOT MADE OR RECORDED IN THE BOOK LOCATED ON THE SURFACE;

5. WEEKLY EXAMINATIONS FOR HAZARDOUS CONDITIONS WERE NOT BEING CONDUCTED BY A QUALIFIED PERSON OR RECORDED IN A RECORD BOOK;

6. WEEKLY VENTILATION EXAMINATIONS WERE NOT BEING CONDUCTED BY A QUALIFIED PERSON OR RECORDED IN A RECORD BOOK;

7. THE THREE VICTIMS HAD NOT RECEIVED THE REQUIRED ANNUAL REFRESHER TRAINING;

8. SELF-RESCUERS AND SELF-CONTAINED SELF-RESCUE DEVICES WERE NOT PROVIDED FOR THE MINERS AT THE MINE;

9. AN IMMINENT DANGER EXISTED IN THAT LOOSE, UNSUPPORTED ROOF WAS FOUND AT SEVERAL LOCATIONS, TIMBERS AND CRIBS WERE KNOCKED OUT, TIMBERS WERE DECAYED, LOOSE COAL ACCUMULATIONS EXISTED ALONG THE HAULAGE ROAD AND ROCK DUST HAD NOT BEEN APPLIED TO ANY AREA OF THE MINE;

10. A LIST OF ALL CERTIFIED AND QUALIFIED PERSONS WAS NOT PROVIDED;

11. METHANE EXAMINATIONS WERE NOT MADE;

12. A METHANE MONITOR WAS NOT PROVIDED FOR THE SCOOP USED TO LOAD COAL;

13. AN APPROVED VENTILATION SYSTEM AND METHANE AND DUST CONTROL PLAN DID NOT EXIST;

14. EXAMINATIONS FOR METHANE IMMEDIATELY BEFORE AND AFTER BLASTING WERE NOT MADE BY A QUALIFIED PERSON NOR WAS A DEVICE AVAILABLE TO MAKE SUCH AN EXAMINATION;

15. THE DAILY REPORTS OF THE PRE-SHIFT AND ON-SHIFT EXAMINATIONS AND THE WEEKLY EXAMINATIONS FOR HAZARDOUS CONDITIONS WERE NOT COUNTERSIGNED BY THE MINE FOREMAN;

16. THE THREE SCOOPS AT THE MINE WERE NOT EXAMINED, TESTED, AND PROPERLY MAINTAINED BY A QUALIFIED PERSON TO ASSURE SAFE OPERATING CONDITIONS AND THERE WAS NO RECORD OF SUCH EXAMINATIONS AVAILABLE;

17. THE POWER CABLE TO AN AC SUMP PUMP WAS NOT INSTALLED ON WELL-INSULATED INSULATORS;

18. A FRAME GROUND WAS NOT PROVIDED FOR THE FAN MOTOR;

19. NO SUITABLE FIRE-FIGHTING EQUIPMENT WAS PROVIDED;

20. A PROGRAM FOR THE INSTRUCTION OF ALL MINERS IN THE LOCATION AND USE OF FIRE-FIGHTING EQUIPMENT, LOCATION OF ESCAPEWAYS, EXITS, AND ROUTES OF TRAVEL TO THE SURFACE AND PROPER EVACUATION PROCEDURES TO BE FOLLOWED IN THE EVENT OF AN EMERGENCY WAS NOT SUBMITTED FOR APPROVAL TO THE DISTRICT MANAGER;

21. A COPY OF THE CERTIFIED MINE MAP OF NO. 3 MINE WAS NOT FURNISHED TO THE SECRETARY OR

HIS AUTHORIZED REPRESENTATIVES PURSUANT TO A WRITTEN REQUEST;

22. AN ACCURATE AND UP-TO-DATE MAP OF THE MINE WAS NOT PROVIDED;

23. AN EXAMINATION FOR FIRES AFTER BLASTING WAS NOT CONDUCTED;

24. TELEPHONE SERVICE OR EQUIVALENT TWO-WAY COMMUNICATION FACILITIES WAS NOT PROVIDED;

25. THE INTAKE AND RETURN ENTRIES USED AS ESCAPEWAYS WERE NOT BEING MAINTAINED IN A SAFE CONDITION AND WERE NOT PROPERLY MARKED; AND

26. A WOODEN STRUCTURE ON THE SURFACE WITHIN 60 FEET OF A MINE OPENING WAS NOT CONSTRUCTED OF FIRE-PROOF MATERIAL.

AS WITH THE MANY OTHER CASES, THE QUESTION HAS TO BE ASKED: WHY WAS THIS OPERATOR ALLOWED BY MSHA TO MINE THIS WAY? DEADLY CONDITIONS WERE ALLOWED TO EXIST WITH NO ACTION FROM THE AGENCY UNTIL A TRAGEDY STRUCK.

ANOTHER EXAMPLE IS THE DEATH OF PHILLIP HAMILTON ON MARCH 18, 1986, AT THE H. & G. NO. 1 MINE IN FLOYD COUNTY, KENTUCKY.

HAMILTON, THE OPERATOR OF THIS SMALL NINE-MAN SUB CONTRACT UNDERGROUND COAL MINE, WAS ELECTROCUTED WHILE PERFORMING WORK ON AN ENERGIZED POWER CENTER UNDERGROUND. MSHA'S INSPECTION REPORTS FOR THE TWO AND ONE-HALF MONTHS PRIOR TO THE MINING DEATH INDICATE THAT THE CONDITIONS AT THE MINE WERE NOT THAT BAD. DURING INSPECTIONS, MSHA

HAD CITED 14 VIOLATIONS FROM JANUARY 1 THROUGH MARCH 17, 1986. HOWEVER, DURING THE MSHA INSPECTIONS OF THIS SMALL MINE FOLLOWING THE MINING DEATH, THE AGENCY ISSUED 60 VIOLATIONS -- 31 CITATIONS, 28 CLOSURE ORDERS, AND 1 SAFEGUARD. THOSE VIOLATIONS INVOLVED ELECTRICAL EQUIPMENT, ROOF CONTROL, VENTILATION, ACCUMULATION OF COMBUSTIBLE MATERIALS, FIRE PROTECTION, TRANSPORTATION EQUIPMENT, RESPIRABLE DUST, AND ACCIDENT REPORTING.

MSHA WAS AT THE MINE, ACCORDING TO THE REPORTS, JUST ONE WEEK BEFORE THE FATAL ACCIDENT. GIVEN THAT FACT, ONE WOULD HAVE TO ASSUME THAT EITHER CONDITIONS IN THE MINE DETERIORATED QUICKLY OR THE MINE LAW WAS NOT ENFORCED PROPERLY DURING THE PREVIOUS VISITS. ONE WOULD ALSO HAVE TO ASSUME, GIVEN THE SEVERITY OF THE AGENCY'S ACTIONS FOLLOWING THIS ACCIDENT, THAT SEVERAL CONDITIONS EXISTED THAT COULD HAVE RESULTED IN A MINING DEATH. IN THIS CASE, IT APPEARS THAT THE ROULETTE WHEEL STOPPED AT ELECTROCUTION.

WHAT NEEDS TO BE DONE TO IMPROVE SAFETY AT SMALL MINES? FIRST AND FOREMOST, THE AGENCY SHOULD ENFORCE THE LAW. THIS MEANS MORE FREQUENT AND MORE THOROUGH INSPECTIONS AND MANDATORY PENALTIES FOR VIOLATIONS OF STANDARDS. THESE SHOULD BE DONE BEFORE TRAGEDIES OCCUR, NOT AFTER. SECOND, MINING PLANS SHOULD BE REVIEWED THOROUGHLY BEFORE APPROVAL, PAYING SPECIAL ATTENTION TO THE ROOF CONTROL AND VENTILATION PLANS' VALUE IN PROTECTING MINERS. WE NEED LAW AND ORDER THROUGHOUT THE INDUSTRY BUT ESPECIALLY IN THIS SEGMENT. THIRD, WE NEED IMPROVED REGULATIONS THAT PAY ATTENTION TO SMALL MINES, NOT REGULATIONS THAT EXEMPT THEM FROM REQUIREMENTS IN AN UNWELCOME TRADEOFF OF OPERATORS' PROFITS FOR MINERS' LIVES. FINALLY, WE NEED TO ADDRESS PROBLEMS ASSOCIATED WITH SUBCONTRACTING. FOR EXAMPLE, WE SHOULD BE ABLE TO HOLD THE PRINCIPAL EQUALLY LIABLE FOR MISDEEDS OF THE CONTRACT OPERATOR. PERHAPS IN THIS WAY, THE PENALTY

SYSTEM COULD PROVIDE INCENTIVES SO THAT OPERATORS OF SMALL MINES COULD HAVE ACCESS TO MORE RESOURCES -- CAPITAL AND HUMAN -- TO RUN THEIR MINES SAFELY.

## REGULATIONS

SINCE 1970, THERE HAVE BEEN OVER 2,156 COAL MINING DEATHS IN THE UNITED STATES. DURING THAT PERIOD, THERE HAVE BEEN 15 MINE DISASTERS THAT CLAIMED THE LIVES OF 179 MINERS. OVER HALF OF THOSE MINE DISASTERS HAVE OCCURRED SINCE 1980, A RATE 60% MORE FREQUENT THAN DURING THE 1970s. THE INVESTIGATIVE REPORTS ON THOSE DEATHS AND DISASTERS SHOW THAT MORE NEEDS TO BE DONE IN THE REGULATIONS TO IMPROVE THE CONDITIONS TO WHICH MINERS ARE EXPOSED.

MOST HEALTH AND SAFETY STANDARDS COVERING THE MINING INDUSTRY HAVE BEEN IN EFFECT SINCE SHORTLY AFTER THE PASSAGE OF THE 1969 COAL ACT. THE IMPACT OF THOSE REGULATIONS IS EVIDENT. FOLLOWING THE PASSAGE OF THE MINE ACT, THE FATALITY RATE DECLINED EVERY YEAR FOR EIGHT CONSECUTIVE YEARS. IN 1977, CONGRESS AMENDED THE COAL MINE ACT TO CONTINUE THAT TREND. CONGRESS ADDRESSED THE FLAWS OF WEAK PENALTIES AND ENFORCEMENT TOOLS THAT FELL SHORT OF FULFILLING THE NEED TO ELIMINATE UNNECESSARY DEATH AND DISABILITY. CONGRESS ALSO ORDERED THE AGENCY TO PREPARE AND IMPLEMENT NEW REGULATIONS.

CONGRESS DIRECTED THE AGENCY TO ISSUE REGULATIONS TO IMPLEMENT THE "PATTERN OF VIOLATIONS" UNDER SECTION 104(e) OF THE 1977 MINE ACT. THAT SECTION OF THE LAW, IF IMPLEMENTED, WOULD GIVE THE AGENCY THE POWER TO ISSUE CLOSURE ORDERS AT COAL MINES IN WHICH OPERATORS ESTABLISHED A PATTERN OF UNWARRANTABLE FAILURE TO COMPLY WITH THE MINE LAW. MSHA INSPECTORS HAVE BEEN UNABLE TO USE THAT TOOL BECAUSE THE AGENCY IGNORED CONGRESS' DIRECTIVE TO ISSUE REGULATIONS.

CONGRESS DIRECTED THE AGENCY TO DEVELOP TOXIC SUBSTANCE STANDARDS (SECTION 101(6)(b)); RECORDKEEPING STANDARDS FOR EMPLOYEE EXPOSURE TO POTENTIALLY TOXIC SUBSTANCES (SECTION 103(c)); HEALTH AND SAFETY STANDARDS FOR MINE CONSTRUCTION WORKERS (SECTION 101(a)(8)); AND TRAINING STANDARDS FOR CONSTRUCTION WORKERS (SECTION 115(d)). THE AGENCY IGNORED CONGRESS' DIRECTIVES ON THESE ALSO.

SECTION 301(b) OF THE 1977 MINE ACT DIRECTED THE SECRETARY OF THE INTERIOR (I.E., THE BUREAU OF MINES) TO INITIATE STUDIES, INVESTIGATION AND RESEARCH TO UPGRADE THE STANDARDS FURTHER AND TO DEVELOP AND PROMULGATE NEW AND IMPROVED STANDARDS THAT WILL PROVIDE INCREASED PROTECTIONS TO MINERS. TEN YEARS HAVE PASSED WITHOUT COMPLIANCE WITH THIS DIRECTIVE.

ACCORDING TO MSHA FIGURES, SINCE 1970 668 MINERS HAVE BEEN KILLED IN ROOF FALL ACCIDENTS, 144 MINERS HAVE BEEN KILLED IN MINE EXPLOSION ACCIDENTS, 175 MINERS HAVE BEEN KILLED IN ELECTRICAL ACCIDENTS AND 55 MINERS HAVE BEEN KILLED IN ACCIDENTS INVOLVING EXPLOSIVES. ALTHOUGH MSHA HAS DEVELOPED PROPOSED REGULATIONS IN EACH OF THESE AREAS, THESE HAVE IGNORED MANY OF THE HAZARDS THAT ARE CLAIMING MINERS' LIVES. INSTEAD, THEY HAVE FOCUSED ON CHANGES TO ELIMINATE SAFETY PROTECTIONS MINERS HAVE HAD FOR YEARS. EXAMPLES OF SOME OF THESE FOLLOW.

## ROOF CONTROL

AS NOTED, OVER 2,150 MINERS HAVE BEEN KILLED IN MINING ACCIDENTS SINCE 1970. MSHA DATA SHOW A TOTAL OF 12,000 ROOF FALLS BETWEEN 1979 AND 1984, INJURING OVER 6,500 MINERS AND KILLING 209. FATALIES FROM ROOF FALLS ARE THE LARGEST SINGLE CAUSE OF FATALTIES IN UNDERGROUND MINES, ACCOUNTING FOR 40% OF ALL UNDERGROUND FATALITIES. THAT IS

AS TRUE TODAY AS IT WAS IN 1970. AGENCY AND OTHER REPORTS ON THOSE ROOF FALL FATAL ACCIDENTS WERE REVIEWED AND THE CAUSES OF THOSE DEATHS WERE ANALYZED BY THE UMWA.

OUR REVIEW DISCLOSED THAT MINERS WERE BEING KILLED FOR THE FOLLOWING REASONS: INADEQUATE ROOF CONTROL PLANS APPROVED FOR THE OPERATOR BY MSHA; FAILURE OF MSHA TO DETERMINE ROOF CONDITIONS PRIOR TO APPROVAL OF OPERATOR'S PLANS; FAILURE OF MINE OPERATORS TO USE FULL OVERHEAD BOLTING; MINING EXCESSIVE ENTRY WIDTHS; FAILURE TO USE ADDITIONAL SUPPORT MATERIAL WHERE NECESSARY; FAILURE TO DESIGN SAFE MINING SYSTEMS; ALLOWING PROCEDURES REQUIRING MINERS TO TRAVEL INBY THE LAST ROW OF SUPPORTS; AND FAILURE TO USE AUTOMATED TEMPORARY ROOF SUPPORT SYSTEMS. THE UWMA ALSO DETERMINED THAT MSHA WAS ALLOWING MINE OPERATORS TO ALTER OTHER SAFETY STANDARDS THAT CREATED ADDITIONAL HAZARDS TO MINERS IN LIEU OF EMPLOYING REQUIRED ROOF CONTROL MEASURES.

## ROOF CONTROL PLAN REVIEW

BETWEEN 1980 AND 1986 THERE WERE AT LEAST 79 ROOF FALL ACCIDENTS, CLAIMING 88 MINERS' LIVES, IN WHICH AGENCY REPORTS INDICATED THAT INADEQUATE PLANS HAD BEEN APPROVED. MANY PLANS REQUIRED MINERS TO BE EXPOSED TO UNSUPPORTED ROOF. FOR EXAMPLE, MINERS AT NEWPORT MINING'S LITTLE EAGLE NO. 1 MINE IN WEST VIRGINIA WERE REQUIRED, BY THE MINE PLAN APPROVED BY MSHA, TO WORK IN AREAS WITHOUT ROOF SUPPORTS. A MINER WAS KILLED BECAUSE OF THE LACK OF OVERHEAD PROTECTION AT THAT MINE IN 1985.

ON NOVEMBER 5, 1985, AT KINGS MILL ENERGY, INC.'S MINE IN SUMMERSVILLE, WEST VIRGINIA, A MINER WAS CRUSHED BY A ROOF FALL. MSHA CONCLUDED: "THE ACCIDENT AND RESULTANT FATALITY OCCURRED WHEN THE VICTIM WAS ALLOWED TO WORK IN AN AREA OF UNSUPPORTED ROOF. A CONTRIBUTING FACTOR WAS

THE ROOF CONTROL PLAN BEING USED. IT WAS NOT COMPATIBLE TO THE ROOF CONDITIONS PRESENT AND WAS NOT ADEQUATE TO SAFELY CONTROL THE LOOSE DRAW SLATE CONDITIONS PRESENT THROUGHOUT THE SECTION."

IN BOTH THESE CASES -- AND OTHERS -- AGENCY INVESTIGATIONS FOUND THE PLANS INITIALLY APPROVED BY MSHA TO BE INEFFECTIVE AND RECOMMENDED CHANGES AFTER THE DEATHS.

OUR REVIEW DISCLOSED THAT MSHA WAS NOT CONDUCTING AN EFFECTIVE ON SITE INSPECTION OF THE ROOF RELATED CONDITIONS PRIOR TO PLAN APPROVAL. IT DISCLOSED THAT INCREASING MINERS' PARTICIPATION IN THE PROCESS WOULD IMPROVE THE QUALITY OF THE PLAN REVIEW, AND IT HIGHLIGHTED THE NEED TO ALLOW MINERS TO REQUEST REVISIONS OF THE PLAN REVIEW PROCESS BETWEEN THE MANDATORY SIX-MONTH REVIEWS.

GIVEN THESE FACTORS, THE ADMINISTRATION'S PROPOSED RULE WAS ASTONISHING. IT ELIMINATED THE MANDATORY SIX-MONTH REVIEW REQUIREMENTS (SECTION 302(a) OF THE 1977 MINE ACT), AND SPECIFICALLY DID NOT INCLUDE THE RIGHT OF THE MINERS' REPRESENTATIVE TO PARTICIPATE IN THE PLAN REVIEW PROCESS. IT DID NOT REQUIRE A SPECIFIC INSPECTION OF MINE ROOF CONDITIONS PRIOR TO PLAN APPROVAL. RATHER, IT LEFT THE ROUTINE INSPECTION SYSTEM AS THE METHOD OF DETERMINING WHETHER THE ROOF CONDITIONS NECESSITATED CHANGES IN THE PLAN -- A SYSTEM THAT NEVER HAS WORKED.

## ROOF BOLTING/ENTRY WIDTHS

THE UMWA MADE A CAREFUL REVIEW OF FATALITY REPORTS INVOLVING ROOF FALL MINING DEATHS BETWEEN 1980 AND 1986. WE FOUND 28 ACCIDENTS RESULTING IN 34 DEATHS IN WHICH LACK OF A FULL OVERHEAD ROOF BOLTING PLAN WAS A MAJOR FACTOR IN THE DEATHS. MANY OF THESE PLANS WERE APPROVED AT SMALL

MINES. FOR EXAMPLE, ON AUGUST 29, 1985, A FATAL ACCIDENT OCCURRED AT THE NEWPORT MINE'S LITTLE EAGLE NO. 2 MINE IN WEST VIRGINIA (MSHA DISTRICT 4). THE MINE DID NOT HAVE A FULL OVERHEAD BOLTING PLAN. FOLLOWING THE INVESTIGATION OF THE MINING DEATH, MSHA OFFICIALS RECOMMENDED A FULL OVERHEAD BOLTING PLAN. THE MINE OPERATOR DISCONTINUED MINING AFTER THE FATALITY AND A NEW OPERATOR CAME IN. MSHA THEN APPROVED ONLY A PARTIAL ROOF BOLTING PLAN FOR THE NEW MINE OPERATOR AND A SECOND MINER DIED AS A RESULT OF A ROOF FALL ON OCTOBER 20, 1986.

AT THE EMPIRE ENERGY EAGLE NO. 5 MINE LOCATED IN COLORADO (MSHA DISTRICT 9), A ROOF FALL OCCURRED IN DECEMBER OF 1983, KILLING A SUPERVISOR. THAT MINE ALSO DID NOT HAVE A FULL OVERHEAD BOLTING PLAN. AFTER THAT ACCIDENT, THE MINERS DEMANDED THAT MSHA REQUIRE A FULL OVERHEAD BOLTING PLAN. THE MSHA DISTRICT 9 MANAGER DISREGARDED THAT RECOMMENDATION AND APPROVED THE OLD PLAN. IN DECEMBER, 1984 A SECOND COAL MINER WAS KILLED. AFTER THE MINERS TOLD THE COMPANY THEY WOULD NOT CONTINUE WORKING WITHOUT A FULL OVERHEAD BOLTING PLAN, THE OPERATOR AGREED. MSHA, DAYS LATER, TOLD THE MINERS THEY ALSO WOULD REQUIRE IT.

AT THE RINEAU NO. 2 MINE IN COLORADO, THE MSHA DISTRICT 9 MANAGER FAILED TO CHANGE A MINE PLAN TO REQUIRE A FULL OVERHEAD BOLTING PLAN, DESPITE REPEATED REQUESTS FROM MSHA INSPECTORS AND ROOF CONTROL SPECIALISTS, WHO CITED THE DANGEROUS ROOF CONDITIONS IN THE MINE. FOLLOWING THE FAILURE OF THESE ATTEMPTS TO GET THE PLAN CHANGED THE MINE ROOF FELL, KILLING TWO MINERS IN 1981.

THE WEST VIRGINIA STATE SUPREME COURT, IN JULY OF 1986, ORDERED THE STATE DEPARTMENT OF MINES TO REQUIRE FULL OVERHEAD ROOF BOLTING PLANS AT ALL MINES USING AUGER TYPE MACHINES. THE WEST VIRGINIA SUPREME COURT REVIEW OF ROOF FALL FATALITIES IN THE STATE BETWEEN 1974 AND 1985 SHOWED

THAT 16 MINERS HAD BEEN KILLED BECAUSE OF THE LACK OF FULL OVERHEAD ROOF BOLTING PLANS. MSHA HAD ALSO APPROVED THE UNSAFE PLANS AT THESE MINES.

THE UMWA DETERMINED THAT MANY OF THE ROOF FALLS OCCURRED WHERE EXCESSIVE ENTRY WIDTHS WERE MINED, PUTTING ADDITIONAL PRESSURES ON THE MINE ROOF. SOME OPERATIONS WERE MINING ENTRIES 30 FEET WIDE OR MORE. THAT MATTER WAS RECENTLY THE SUBJECT OF REVIEW IN WEST VIRGINIA. IN JANUARY OF 1987, THE WEST VIRGINIA BOARD OF COAL MINE HEALTH AND SAFETY, WHICH IS COMPRISED OF OPERATORS' REPRESENTATIVES, MINERS' REPRESENTATIVES AND STATE DEPARTMENT OF MINES OFFICIALS ADDRESSED THIS ISSUE. THAT BOARD VOTED UNANIMOUSLY TO RESTRICT THE ENTRY WIDTHS AT AUGER MINES TO 26 FEET AND REQUIRED ADDITIONAL SUPPORT OF ENTRIES DOWN TO 16 FEET WIDE, IN ADDITION TO FULL OVERHEAD BOLTING.

IN RESPONSE TO MSHA'S ROOF CONTROL PROPOSED RULES, THE UMWA RECOMMENDED THAT EACH MINE OPERATOR BE REQUIRED TO USE A FULL OVERHEAD ROOF SUPPORT PLAN AND TO RESTRICT THE WIDTH OF ENTRIES. WE FURTHER RECOMMENDED THAT ADDITIONAL SUPPORTS BE MANDATED WHEN ENTRIES EXCEED 20 FEET. ALTHOUGH WE ARE NOT FULLY SATISFIED WITH THE ACTION TAKEN BY WEST VIRGINIA, IT WAS A LONG STEP IN THE RIGHT DIRECTION. MSHA WOULD BE WELL ADVISED TO TAKE SIMILAR ACTION. OTHERWISE, MSHA DISTRICT OFFICIALS WILL BE ALLOWED TO CONTINUE PERMITTING INEFFECTIVE, DEADLY PLANS.

## AUTOMATED TEMPORARY SUPPORT SYSTEMS (ATRS)

THE UMWA IDENTIFIED APPROXIMATELY 30 MINING DEATHS BETWEEN 1980 AND 1986 THAT OCCURRED WHEN MINERS WERE SETTING TEMPORARY ROOF SUPPORTS. SETTING SUCH SUPPORTS OFTEN EXPOSES MINERS TO ROOF FALLS. DEVICES ARE AVAILABLE, CALLED AUTOMATED TEMPORARY ROOF SUPPORT SYSTEMS (ATRS), THAT INSTALL ROOF BOLTS WHILE KEEPING MINERS PROTECTED FROM ROOF FALLS. COAL MINING STATES HAVE MOVED WELL AHEAD OF MSHA IN REQUIRING THE USE OF ATRS SYSTEMS.

THE UMWA PROPOSED THAT ATRS SYSTEMS BE REQUIRED AT ALL MINES IN WHICH TECHNOLOGY PERMITS THEIR USE -- WHICH INCLUDES SMALL, LOW SEAM MINES. MINERS AT SMALL MINES MAY BENEFIT THE MOST FROM THE USE OF THESE DEVICES.

IN THE PUBLIC NOTICE ON THE ROOF CONTROL STANDARDS, MSHA QUESTIONED SMALL MINE OPERATORS' ECONOMIC ABILITY TO PROVIDE THESE DEVICES. DISCUSSIONS DURING THE HEARINGS HELD BY MSHA ON THE PROPOSED RULES INDICATED MSHA'S DESIRE NOT TO REQUIRE THEIR USE AT SMALL LOW SEAM MINES, EVEN THOUGH MACHINES WERE AVAILABLE. A BETTER QUESTION FOR MSHA TO HAVE ASKED WAS: COULD THE WIVES OF MINERS AFFORD TO LOSE THEIR HUSBANDS? GIVEN MSHA'S ENFORCEMENT OF OTHER STANDARDS AT SMALL MINES, WE EXPECT THAT MSHA WOULD GRANT EXEMPTIONS ON THIS STANDARD UNLESS THE LAW SPECIFICALLY DENIED SUCH EXEMPTIONS.

## ROOF FALL WARNING DEVICES

GIVEN THAT 668 ROOF FALL DEATHS HAVE OCCURRED SINCE 1970, IT WOULD SEEM LOGICAL THAT EARLY WARNING DEVICES TO ALERT MINERS OF ROOF MOVEMENTS THAT COULD SIGNAL A FALL WOULD PREVENT DEATHS. THE U.S. BUREAU OF MINES HAS REVIEWED VARIOUS DEVICES FOR THIS PURPOSE AND HAS ISSUED REPORTS ON THEIR AVAILABILITY. SINCE SEVERAL DIFFERENT TYPES OF ROOF MOVEMENT INDICATOR DEVICES ARE NOW AVAILABLE, AND THEIR POTENTIAL IS SO GREAT, THE UMWA RECOMMENDED THAT THESE BE REQUIRED IN THE ROOF CONTROL REGULATIONS.

MSHA'S PROPOSED RULE NOT ONLY IGNORED THIS RECOMMENDATION, THE AGENCY OPPOSED IT. MSHA CITED, AMONG OTHER

REASONS, THE POTENTIAL FOR MINERS TO ABANDON SAFE AREAS BECAUSE OF FALSE ALARMS. GIVEN THE CHOICE OF A POSSIBLE INTERRUPTION OF PRODUCTION FOR AN ALARM OR A POSSIBLE SAVING OF LIVES, THE PREFERRED APPROACH IS OBVIOUS TO THOSE CONCERNED ABOUT MINERS' SAFETY -- TAKE THE ACTION THAT PROTECTS THE MINER.

## COAL/ROCK OUTBURST CONTROL

IN MSHA'S PREPROPOSAL DRAFT ON ROOF CONTROL REGULATIONS, THE AGENCY ADDRESSED COAL OR ROCK OUTBURST WITH PROVISIONS TO REQUIRE THE OPERATOR TO ADOPT MEASURES TO CONTROL THIS PROBLEM. MSHA, HOWEVER, REMOVED THIS PROVISION FROM THE PROPOSED RULE. REGULATIONS REQUIRING A ROOF CONTROL PLAN THAT WILL EFFECTIVELY AND SPECIFICALLY CONTROL COAL OR ROCK OUTBURSTS IS NECESSARY. WE PROPOSED INCORPORATION OF LANGUAGE TO COVER THIS IN RESPONSE TO MSHA'S PROPOSED REGULATION. A 1984 REPORT ENTITLED CONTROLLING COAL MINE BUMPS, WRITTEN BY MSHA AND BUREAU OF MINES OFFICIALS, STATED THAT 28 FATALITIES OCCURRED AS A RESULT OF BUMPS IN THE PREVIOUS 25 YEARS. THE REPORT ALSO CITED 73 ACCIDENTS FROM 1978 THROUGH 1983.

NUMEROUS METHODS OF MONITORING, PREDICTING AND CONTROLLING PRESSURE BUMPS ARE AVAILABLE AND ARE DESCRIBED IN DETAIL IN BUREAU OF MINES REPORTS. OPERATORS MUST BE REQUIRED TO UTILIZE THIS TECHNOLOGY. USE OF THESE AVAILABLE TECHNIQUES FOR PREDICTING AND CONTROLLING PRESSURE BUMPS ARE NECESSARY CONSIDERING THE CERTAIN INCREASE OF THIS PROBLEM AS DEEPER SEAMS ARE MINED. MSHA SHOULD NOT HAVE ELIMINATED THE NECESSARY PROVISIONS IN THE ROOF CONTROL REGULATIONS.

## RETREAT MINING

WHEN A SEAM OF COAL HAS BEEN MINED OUT, MUCH COAL REMAINS IN THE FORM OF PILLARS. THESE ARE LEFT TO HOLD UP THE ROOF. RETREAT MINING IS THE PRACTICE OF EXTRACTING THESE COAL PILLARS AND ALLOWING THE ROOF TO FALL. RETREAT MINING IS ONE OF THE MOST HAZARDOUS PRACTICES IN THE INDUSTRY. SINCE 1980, AT LEAST 31 MINERS HAVE BEEN KILLED DURING RETREAT MINING.

SPECIAL PLANS MUST BE DEVISED TO PROTECT THE MINERS DURING THIS OPERATION. MINERS' DEATHS DURING RETREAT MINING USUALLY RESULT FROM: INADEQUATE SUPPORT SYSTEMS; ROOF FALLS WHILE ATTEMPTING TO SET SUPPORTS OR RETRIEVE EQUIPMENT; INADEQUATE EVALUATION OF ROOF CONDITIONS TO DETECT PREMATURE FALLS; OR FAILURE TO FOLLOW THE APPROVED PLAN. DIFFERENT CONDITIONS FROM MINE TO MINE NECESSITATE MINE-SPECIFIC PLANS TO INSURE THE SAFETY OF THE MINERS. THOSE PLANS MUST BE SUBJECTED TO INCREASED SCRUTINY TO ASSURE THAT EACH OF THESE KNOWN PROBLEMS IS ADDRESSED. MINING DEATHS INDICATE THIS IS NOT THE CASE.

TO ADDRESS THE CRITICAL ASPECT OF MINERS' EXPOSURE, THE U.S. BUREAU OF MINES IS DEVELOPING A UNIT CALLED THE MOBILE ROOF SUPPORT. THIS IS A MOBILE REMOTE CONTROLLED ROOF SUPPORT UNIT DESIGNED FOR RETREAT MINING USE. THIS UNIT CONTINUES TO PROVIDE A SAFE WORKING SECTION AND INCREASES PRODUCTIVITY WHILE REDUCING ROOF SUPPORT COSTS. THIS TYPE OF SYSTEM SHOULD BE REQUIRED.

## IMPROVEMENTS TECHNOLOGY HAS PROVIDED

WHEN MINERS ARE PROVIDED THE PROTECTION OF AN EFFECTIVE ROOF CONTROL PLAN AND ATRS'S FOR INSTALLING FULL OVERHEAD BOLTING, PROGRESS VITAL TO ELIMINATING ONE MAJOR KILLER OF UNDERGROUND MINERS WILL BE MADE. AND OTHER TECH

NOLOGY EXISTS TO FURTHER ELIMINATE EXPOSURE TO UNSUPPORTED ROOF. OTHER PURPOSES FOR GOING BEYOND UNSUPPORTED ROOF INCLUDE EXTENDING THE LINE CURTAIN AND TAKING METHANE GAS READINGS. OVER 50 FATAL ROOF FALL DEATHS HAVE OCCURRED SINCE 1980 IN WHICH MINERS HAVE BEEN INBY PERMANENT SUPPORTS WHILE DOING ONE OF THESE TWO JOBS.

ALTHOUGH WE HAVE ADDRESSED ATRS SYSTEMS THAT CAN MINIMIZE THESE TYPES OF ACCIDENTS, OTHER SIMPLE AND INEXPENSIVE TECHNOLOGY EXISTS TO PROTECT MINERS IN THESE SITUATIONS, LEAVING NO REASONABLE EXCUSE FOR THEM NOT TO BE REQUIRED.

ONE SUCH METHOD, DEVELOPED BY THE BUREAU OF MINES, IS THE EXTENSIBLE LINE CURTAIN. SIMPLE AND INEXPENSIVE, THIS CURTAIN ALLOWS THE MINER TO PERFORM THE TASK WHILE UNDER PERMANENT ROOF SUPPORT.

FOR TAKING METHANE READINGS, A METHANE PROBE ALLOWS A MINER TO TAKE READINGS AT THE FACE WITH A LONG TUBE ATTACHED TO A DETECTOR WHILE STANDING AT A DISTANCE, UNDER SUPPORTED TOP. SUCH A PROBE CAN EASILY BE DEVISED FROM WIDELY AVAILABLE MATERIALS.

ANOTHER MAJOR ADVANCE IN TECHNOLOGY THAT IS READILY AVAILABLE AND CAN MAKE A MAJOR CONTRIBUTION IN DETECTING FAULTS IS THE USE OF SATELLITES TO AID IN ROOF CONTROL. A SATELLITE SURVEY SHOULD BE MADE OF ALL PLANNED NEW SECTIONS AND NEW MINES BEFORE THE ROOF CONTROL PLAN IS APPROVED. THIS COULD HELP ASSURE THAT PILLAR DESIGN, DIMENSION, AND ROOF CONTROL MEASURES ARE ADEQUATE. ACCORDING TO A STUDY PRESENTED AT THE 15TH ANNUAL INSTITUTE ON COAL MINE HEALTH, SAFETY AND RESEARCH IN BLACKSBURG, VIRGINIA, SUCH SURVEYS ARE PROVING TO BE SUCCESSFUL TOOLS FOR THE INDUSTRY. MSHA, HOWEVER, IN THE PROPOSED RULES, IGNORES THIS TECHNOLOGY.

## VENTILATION

PROPER VENTILATION IS ONE OF THE PRINCIPAL FACTORS IN PREVENTING DISASTERS BECAUSE IT PROVIDES FOR THE REMOVAL OF METHANE. MOST DISASTERS, FIRES AND EXPLOSIONS ARE CAUSED, DIRECTLY OR INDIRECTLY, BY VENTILATION FAILURES. SINCE 1970, THERE HAVE BEEN AT LEAST 15 COAL MINE DISASTERS (DEFINED AS AN ACCIDENT IN WHICH 5 OR MORE MINERS WERE KILLED) THAT HAVE RESULTED IN THE DEATHS OF 179 MINERS. THEY ARE AS FOLLOWS:

| Date | Company & Mine | Location | No. Killed |
|---|---|---|---|
| 12/30/70 | Finley Coal Co.<br>#15 & 16 Mines | Hyden, KY | 38 |
| 7/22/72 | Consolidation Coal Co.<br>Blacksville #1 Mine | Blacksville, WV | 9 |
| 12/16/72 | Itmann Coal Co.<br>#3 Mine | Itmann, WV | 5 |
| 3/9/76 | Blue Diamond Coal Co.<br>Scotia Mine | Scotia, KY | 15 |
| 3/11/76 | Blue Diamond Coal Co.<br>Scotia Mine | Scotia, KY | 11 |
| 3/31/77 | Kocher Coal Company<br>Porter Tunnel | Tower City, PA | 9 |
| 4/4/78 | Clinchfield Coal Co.<br>Moss #3 Mine | Bee, WV | 5 |
| 11/7/80 | Westmoreland Coal Co.<br>Ferrell #17 | Robinson, WV | 5 |

| Date | Company & Mine | Location | No. Killed |
|---|---|---|---|
| 4/15/81 | Mid-Continent Resources<br>Dutch Creek No. 1 | Redstone, CO | 15 |
| 12/8/81 | Grundy Mining Co.<br>No. 21 Mine | Palmer, TN | 13 |
| 12/7/81 | Adkins Coal Co.<br>No. 11 MIne | Kite, KY | 8 |
| 1/20/82 | R.F.H. Coal Co.<br>No. 1 Mine | Craynor, KY | 7 |
| 6/21/83 | Clinchfield Coal Co.<br>McClure No. 1 Mine | McClure, VA | 7 |
| 12/19/84 | Emery Mining Company<br>Wilberg Mine | Castledale, UT | 27 |
| 2/6/86 | Consolidation Coal Co.<br>Loveridge No. 22 | Fairview, WV | 5 |

OF THESE RECENT DISASTERS, OVER HALF WERE THE RESULT OF MINE EXPLOSIONS. THESE MINES WERE: FINLEY COAL COMPANY'S NO. 15 AND NO. 16 MINES; ITMANN COAL COMPANY'S NO. 3 MINE; BLUE DIAMOND COAL COMPANY'S SCOTIA MINE; WESTMORELAND COAL COMPANY'S, FERRELL NO. 17 MINE; MID-CONTINENT RESOURCES' DUTCH CREEK NO. 1 MINE; GRUNDY MINING COMPANY'S, NO. 21 MINE; AND CLINCHFIELD COAL COMPANY'S MCCLURE NO. 1 MINE.

OTHER RECENT EXPLOSIONS INCLUDE:

| Date | Company & Mine | Location | No. Killed |
|---|---|---|---|
| 7/3/83 | Helen Mining Co.<br>Homer City Mine | Homer City, PA | 1 |
| 2/16/84 | Greenwich Collieries<br>No. 1 Mine | Green Township, PA | 3 |
| 12/11/85 | M.S.W. Coal Company<br>No. 2 Slope Mine | Carlstown, PA | 3 |

ACCORDING TO INFORMATION RECEIVED FROM THE MINE SAFETY AND HEALTH ADMINISTRATION, AT LEAST 144 PERSONS HAVE BEEN KILLED IN THE COAL MINING INDUSTRY AS A RESULT OF EXPLOSIONS SINCE 1970. SIXTY-FIVE OF THOSE DEATHS OCCURRED SINCE 1980. NOT INCLUDED IN THOSE FIGURES ARE THE MINING FATALITIES THAT HAVE OCCURRED DUE TO ASPHYXIATION OR CARBON MONOXIDE POISONING. EXAMPLES OF THESE ARE:

| Date | Company, Mine and Location | Cause | No. Killed |
|---|---|---|---|
| 1/5/82 | W.R.W. Corporation<br>No. 1 Mine<br>Bryants, Station, KY | Carbon Monoxide | 2 |
| 9/15/85 | R.&R. Coal Co.<br>No. 3 Mine<br>Woodbine, KY | Carbon Monoxide | 3 |

SINCE 1980 ALONE, 8 DISASTERS HAVE OCCURRED IN THE MINING INDUSTRY, KILLING 87 PERSONS. OF THESE 8 DISASTERS, 7 HAD CONTRIBUTING FACTORS ASSOCIATED WITH VENTILATION REGULATIONS. THEY WERE: WESTMORELAND COAL COMPANY'S FERRELL NO. 17; MID CONTINENT RESOURCES' DUTCH CREEK NO. 1; GRUNDY MINING COMPANY'S NO. 21 MINE; ADKINS COAL COMPANY'S NO. 11 MINE; R.F.H. COAL COMPANY'S NO. 1 MINE; CLINCHFIELD COAL COMPANY'S MCCLURE NO. 1 MINE; AND EMERY MINING COMPANY'S WILBERG MINE.

MSHA'S PROPOSALS ON MINE VENTILATION SHOW THE AGENCY'S CLEAR FAILURE TO ADDRESS THE CONDITIONS THAT LED TO MANY OF THESE DEATHS AND DISASTERS. INSTEAD, THEY CATER TO OPERATOR INTERESTS THAT WILL LIKELY RESULT IN MORE DISASTERS.

THE UNITED MINE WORKERS OF AMERICA HAS BEEN PRESSURING THE AGENCY TO TAKE ACTION ON VENTILATION HAZARDS FOR SOME TIME. FOR INSTANCE, THE UMWA WROTE TO RAYMOND DONOVAN, SECRETARY OF LABOR IN 1981 AND TO DAVID ZEGEER, ASSISTANT SECRETARY IN 1984, REQUESTING EMERGENCY RULE-MAKING TO EXPAND THE REQUIREMENTS OF THE PRE-SHIFT EXAMINATIONS CONTAINED IN SECTION 303 OF THE 1977 MINE ACT AND 75.303(a) OF TITLE 30 OF THE CFR. IN THAT CORRESPONDENCE, THE UMWA CITED THE FAILURE OF MSHA TO REQUIRE SUFFICIENT PRE-SHIFT EXAMINATIONS OF IDLE AND ABANDONED AREAS. THIS FAILURE LED DIRECTLY TO THE EXPLOSIONS AT BLUE DIAMOND COAL COMPANY'S SCOTIA MINE, OAKWOOD RED ASH COAL CORPORATIONS' MINE, P.&P. MINE CORPORATION'S MINE, WESTMORELAND COAL COMPANY'S FERRELL NO. 17 MINE AND PENNSYLVANIA MINING CORPORATION'S GREENWICH MINE -- WHICH, ALL TOTALLED, RESULTED IN THE DEATHS OF OVER 40 MINERS. THE AGENCY REFUSED OUR REQUESTS. FURTHER, WHEN THE AGENCY ISSUED PROPOSALS ON CHANGES IN THE UNDERGROUND VENTILATION REQUIREMENTS, THEY IGNORED THIS PROBLEM.

A REVIEW OF UMWA PROPOSALS AND OF THE AGENCY'S PROPOSED CHANGES IN THE UNDERGROUND MINE VENTILATION STANDARDS ARE AS FOLLOWS.

## PRE-SHIFT EXAMINATIONS

THE UMWA PROPOSED THAT A PRE-SHIFT EXAMINATION BE MADE OF THE ENTIRE MINE IN ORDER TO LOCATE AND DILUTE ANY METHANE BEFORE IT ACCUMULATES TO AN EXPLOSIVE RANGE AND RESULTS IN THE INJURY OR DEATH OF MINERS. WE PROPOSED THAT AN EXAMINATION BE MADE OF ALL BELT CONVEYOR HAULAGEWAYS, LONGWALL TAILGATE ENTRIES, TRACK HAULAGEWAYS AND IDLE AREAS EVEN THOUGH PERSONS ARE NOT PRESENTLY WORKING IN THE AREAS. THIS IS DESIGNED TO INSURE A SAFE WORKING PLACE FOR THE MINERS WHEN MANAGEMENT DIRECTS THEM TO ENTER THESE AREAS TO RETRIEVE EQUIPMENT OR SUPPLIES OR FOR OTHER REASONS. THE UMWA ALSO RECOMMENDED THAT THE PRE-SHIFT EXAMINER

"DANGER-OFF" HAZARDOUS CONDITIONS ENCOUNTERED DURING HIS EXAMINATIONS.

DESPITE THE VENTILATION-RELATED DISASTERS, MSHA HAS NOT ONLY PROPOSED DELETING THE REGULATION TO HAVE THE EXAMINER POST DANGEROUS AREAS AS "OFF LIMITS,", BUT ALSO LIMITED THE AREAS OF THE MINE THAT MUST BE EXAMINED TO THOSE IN WHICH PERSONS ARE SCHEDULED TO WORK OR TRAVEL. THIS WOULD NOT INCLUDE ALL IDLE AREAS, BELT CONVEYOR HAULAGEWAYS, SECTION ESCAPEWAYS, LONGWALL TAILGATE ENTRIES AND MANY OTHER AREAS IN WHICH METHANE COULD ACCUMULATE. IN ADDITION, MSHA'S PROPOSAL WAS UNCONSCIONABLE IN THAT IT WOULD INCREASE THE ALLOWABLE LEVELS OF EXPLOSIVE METHANE GAS IN COAL MINES AND, AT THE SAME TIME, ELIMINATE THE 20-MINUTE METHANE TESTS REQUIRED BY THE MINE ACT AT CUTTING FACES, WHERE METHANE IS LIBERATED AND EXPLOSIONS CAN OCCUR. THE AGENCY ALSO PROPOSED TO ELIMINATE REQUIREMENTS THAT KEPT AIR AT THE MINE FACE TO DILUTE THE DANGEROUS METHANE. MSHA NOT ONLY IGNORED THE DEATHS RESULTING FROM VENTILATION-RELATED DISASTERS, THE PROPOSED CHANGES INCREASE THE POTENTIAL FOR DISASTERS.

## BELT VENTILATION

MSHA DID NOT STOP THERE. SECTION 303(y)(1) OF THE 1977 MINE ACT PROHIBITS VENTILATING THE FACE, WHERE MINERS WORK, WITH AIR THAT HAS PASSED OVER CONVEYOR BELTS. THE INTENT IS CLEAR. THERE ARE MANY FIRE SOURCES ASSOCIATED WITH CONVEYOR BELTS AND, SHOULD A FIRE OCCUR IN BELT ENTRIES, THE DEADLY SMOKE WOULD NOT BE DIRECTED AT THE MINERS. MSHA'S PROPOSED RULES WOULD HAVE ELIMINATED THIS STANDARD.

THAT SECTION OF THE LAW ALSO PROHIBITS RETURN AIR (AIR THAT IS CONTAMINATED WITH METHANE AND COAL DUST FROM THE AREA IN WHICH COAL IS EXTRACTED) FROM BEING USED TO VEN

TILATE BELT ENTRIES. SUCH VENTILATION PRACTICES WOULD PERMIT AIR WITH EXPLOSIVE METHANE GAS AND COAL DUST TO TRAVEL THROUGH AN ENTRY WITH ALL THE POTENTIAL IGNITION SOURCES FROM CONVEYOR BELTS. IT SHOULD BE NOTED THAT BELT FIRES ARE AMONG THE MOST FREQUENT FIRES IN COAL MINES.

MSHA'S PROPOSAL IS CONTRARY TO THAT SECTION OF THE MINE LAW AND WOULD INCREASE THE POTENTIAL FOR MINE EXPLOSIONS. THE HIDDEN REASON FOR THESE CHANGES IS TO ALLOW MINE OPERATORS TO REDUCE THE NUMBER OF ENTRIES AT LONGWALL MINES, WHICH WOULD PERMIT THEM TO SET UP THEIR LONGWALLS FASTER AND TO PRODUCE COAL AT A FASTER PACE. TWO-ENTRY MINING SYSTEMS CAUSE A DRAMATIC REDUCTION IN THE NUMBER OF ESCAPE ROUTES AVAILABLE TO MINERS. THEY ALSO CAUSE THE ENTIRE AIR COURSE TO BE VENTILATED WITH ONE SPLIT OF AIR. WHEN A FIRE OR EXPLOSION OCCURS, THE FEW ESCAPE ROUTES IN SUCH A SYSTEM OF MINING ARE EASILY COMPLETELY CONTAMINATED WITH DENSE, POISONOUS SMOKE.

MSHA PROPOSED TO SUBSTITUTE EARLY-WARNING FIRE-DETECTION DEVICES AND A METHANE DETECTION SYSTEM AS REPLACEMENTS FOR THE ESCAPE ROUTES AND PROTECTIONS THAT PREVENT SMOKE FROM CONTAMINATING MINERS' WORK AREAS UNDER EXISTING REGULATIONS. THE UMWA KNOWS THAT THE MERE INSTALLATION OF SUCH SYSTEMS CANNOT REPLACE THE ESCAPE PROTECTIONS MINERS NOW HAVE. THESE DETECTION SYSTEMS ARE FAR FROM FOOL-PROOF AND, AT BEST, ONLY SERVE AS A WARNING THAT A DANGEROUS SITUATION ALREADY HAS TAKEN PLACE. SUCH A WARNING COULD ALREADY BE TOO LATE FOR THE MINERS' SAFETY. THE UMWA HAS STATED REPEATEDLY THAT THESE WARNING SYSTEMS SHOULD BE USED IN ADDITION TO THE CURRENT PROTECTIONS - NOT AS A REPLACEMENT FOR THEM.

AT THE WILBERG MINE, A WARNING WAS GIVEN TO THE MINERS BEFORE THEY DETECTED THE FIRE OR SMOKE. BECAUSE OF THE REDUCED NUMBER OF ESCAPEWAYS AND THE LOCATION OF THE FIRE, HOWEVER, THEY WERE UNABLE TO FIND THEIR WAY THROUGH THE FIRE AND DENSE SMOKE, AND WERE TRAPPED AND DIED. NEEDLESS TO SAY, THE UMWA STRONGLY OPPOSED MSHA'S LIFE-THREATENING PROPOSAL. THE UMWA ADDITIONALLY PROPOSED THAT THE MINERS' ESCAPEWAYS BE VENTILATED ON SEPARATE SPLITS OF AIR TO AVOID SITUATIONS IN WHICH ENTIRE ESCAPE ROUTES WOULD BE CONTAMINATED IMMEDIATELY.

## VENTILATION PLAN REVIEW

UNDER SECTION 303(o) OF THE MINE ACT, ALL MINE VENTILATION PLANS MUST BE REVIEWED EVERY SIX MONTHS. SEVERAL MINE EXPLOSIONS AND DISASTERS, SUCH AS GREENWICH, FERRELL NO. 17 AND WILBERG HAVE SHOWN THE NEED FOR INCREASED REVIEW. THE UMWA PROPOSED CHANGES TO INCREASE PROTECTION IN THE PLAN REVIEW PROCESS, INCLUDING PARTICIPATION OF A MINERS' REPRESENTATIVE, AND REQUIRING AN INSPECTION OF THE MINE VENTILATION SYSTEM PRIOR TO APPROVAL. MSHA PROPOSED TO ELIMINATE THE SIX-MONTH REVIEW REQUIREMENT. THE AGENCY ALSO IGNORED THE MINERS' REPRESENTATIVE'S PARTICIPATION IN THE PLAN REVIEW PROCESS AND LEFT THE TIME TO REVIEW BASICALLY UP TO THE OPERATOR. NEEDLESS TO SAY, MSHA ALSO DID NOT REQUIRE A SPECIAL INSPECTION OF THE MINE VENTILATION SYSTEM BEFORE THE THE SIX-MONTH REVIEW.

## METHANE BLEEDER SYSTEMS

BLEEDER SYSTEMS ARE AN ESSENTIAL PART OF THE MINE VENTILATION SYSTEM. BLEEDERS ARE NECESSARY TO CONTROL GASES THAT ACCUMULATE IN INACCESSIBLE MINED-OUT AREAS OF THE MINE. SECTION 303(z)(2) OF THE MINE ACT SETS FORTH PROVISIONS FOR THE SECRETARY TO REQUIRE SUCH BLEEDER SYSTEMS. MSHA, HOWEVER, PROPOSED IN THE VENTILATION PROPOSALS TO EXEMPT OPERATORS AT MINES THAT HAVE WHAT IS CONSIDERED

A LOW METHANE LEVEL. A POSITIVE FLOW OF VENTILATION IS VITAL IN GOB AREAS TO CARRY AWAY BLACK DAMP, CARBON MONOXIDE AND EXPLOSIVE GASES OTHER THAN METHANE THAT MAY ACCUMULATE. METHANE ACCUMULATION IS NOT THE ONLY HAZARD THAT GOB AREAS PRESENT; THEREFORE, IT MUST NOT GOVERN THE REQUIREMENT FOR BLEEDER SYSTEMS.

## ELECTRICAL STANDARDS

FROM 1980 THROUGH 1986, A TOTAL OF 61 MINERS DIED AS A RESULT OF ELECTRICAL ACCIDENTS. IN REVIEWING THE PREPROPOSAL DRAFT OF ELECTRICAL STANDARDS, THE UMWA NOTED SEVERAL SIMPLE, ECONOMICAL ADJUSTMENTS NEEDED IN THE STANDARDS THAT COULD HAVE PREVENTED MANY OF THOSE DEATHS. SOME WERE AS SIMPLE AS CHANGING WORK PROCEDURES. THESE CHANGES WE FELT NECESSARY ARE:

### TROUBLE-SHOOTING ENERGIZED CIRCUITS

THE AGENCY FAILED TO REQUIRE SIMPLE SAFEGUARDS, SUCH AS REQUIRING THAT ELECTRICIANS WEAR GLOVES WHEN WORKING ON AN ENERGIZED CIRCUIT. SINCE 1970, SIX MINERS HAVE BEEN ELECTROCUTED WHILE TROUBLE-SHOOTING ENERGIZED CIRCUITS. NONE OF THE VICTIMS WAS WEARING GLOVES. AN INEXPENSIVE PAIR OF RUBBER GLOVES COULD HAVE PREVENTED EACH OF THESE TRAGIC ACCIDENTS. MSHA HAS IGNORED THIS SIMPLE MEASURE.

### TAGGING AND LOCKING OUT OF CIRCUITS

FREQUENTLY, ELECTRICIANS WORKING ON A CIRCUIT ARE ELECTROCUTED WHEN ANOTHER PERSON UNKNOWINGLY RECONNECTS THAT CIRCUIT, AS WAS THE CASE IN THE DEATH OF HASSEL CREECH ON SEPTEMBER 17, 1986, AT THE BLUE DIAMOND COAL

COMPANY'S SCOTIA MINE. MSHA'S PROPOSED RULE HAS REQUIRED THAT THE CIRCUIT BE LOCKED OUT. WE BELIEVE, GIVEN THE MINING DEATHS THAT HAVE OCCURRED, THAT THE AGENCY MUST GO ONE STEP FURTHER. EVEN THOUGH THE EQUIPMENT CABLE IS LOCKED OUT, MINERS WHO ARE ISSUED MASTER KEYS COULD VERY EASILY RE-ENERGIZE THE WRONG CIRCUIT ACCIDENTALLY. FOR THIS REASON, WE HAVE RECOMMENDED THAT EACH ELECTRICIAN BE ISSUED A LOCK WITH A UNIQUE KEY AND BE REQUIRED TO TAG THE CABLE PLUG (CATHEAD) WITH A NAME TAG TO INDICATE WHO IS WORKING ON WHICH CIRCUIT. THIS SIMPLE PROCEDURE WOULD ELIMINATE CONFUSION AS TO WHICH CIRCUIT SHOULD BE RE-ENERGIZED.

## CERTIFIED CABLE SPLICERS

MSHA HAS PROPOSED TO ALLOW PERSONS WHO HAVE NO ELECTRICAL BACKGROUND OR ELECTRICAL CERTIFICATION TO MAKE CABLE SPLICES. THESE UNTRAINED PERSONS, WHO MAY HAVE NO KNOWLEDGE OF CIRCUITRY OR GROUNDING, COULD VERY EASILY SET UP A POTENTIAL SHOCK HAZARD FOR THEMSELVES AND CO-WORKERS. SINCE 1970, 29 MINERS HAVE DIED AS A RESULT OF CUTTING INTO ENERGIZED TRAILING CABLES, FOLLOWING IMPROPER SPLICING PROCEDURES OR FROM IMPROPERLY MADE SPLICES. ONLY CERTIFIED ELECTRICIANS SHOULD BE ALLOWED TO PERFORM THIS WORK.

## EXPLOSIVE AND BLASTING STANDARDS

ACCIDENTS INVOLVING EXPLOSIVES HAVE CLAIMED 27 LIVES SINCE 1981. INCLUDED IN THAT TOTAL ARE TWO DISASTERS. MSHA HAS FAILED TO INCORPORATE SOUND RECOMMENDATIONS THAT COULD HAVE PREVENTED THESE DISASTERS AND AVOIDED THE OTHER FATALITIES. SOME OF THE PROBLEMS WITH THE BLASTING AND EXPLOSIVE PROPOSALS INCLUDE:

## SHOOTING FROM THE SOLID

MSHA CONTINUES TO RETAIN PROVISIONS FOR THE UNSAFE PRACTICE OF SHOOTING FROM THE SOLID. WHEN SHOOTING FROM THE SOLID, THE COAL IS NOT UNDERCUT. UNDERCUTTING IS NECESSARY TO PROVIDE EXPANSION ROOM WHEN THE SHOT IS INITIATED. THE POTENTIAL OF A SHOT BLOW-OUT IS INCREASED WITHOUT EXPANSION ROOM. SHOOTING FROM THE SOLID WAS PRACTICED AT THE ADKINS COAL COMPANY'S NO. 11 MINE, IN WHICH EIGHT MINERS WERE KILLED IN A COAL DUST EXPLOSION ON DECEMBER 7, 1981. THE DUST EXPLOSION WAS IGNITED BY A BLOWN-OUT SHOT.

## BATTERY STARTING IN ANTHRACITE MINES

MSHA HAS PROPOSED THE USE OF UNCONFINED EXPLOSIVES OR "OPEN SHOTS" TO BE USED FOR BATTERY STARTING IN ANTHRACITE MINES. SUCH A PRACTICE HAS LONG BEEN TABOO IN THE MINING INDUSTRY. AN UNCONFINED SHOT PRODUCES OPEN FLAMES AND GREATLY INCREASES THE POSSIBILITY OF IGNITING COAL DUST OR METHANE.

## NUMBER OF SHOTS ALLOWED FOR SHOOTING THE FACE

MSHA FAILED TO INCLUDE PROVISIONS TO RESTRICT THE NUMBER OF SHOTS THAT CAN BE USED FOR BLASTING COAL FACES. EXISTING REGULATIONS THAT LIMIT THE NUMBER TO NO MORE THAN 20 SHOTS HAVE BEEN OMITTED FROM THE NEWLY-PROPOSED REGULATIONS. SECTION 313(c) OF THE ACT PROHIBITS THE USE OF MORE THAN 20 SHOTS, WITH AN EXCEPTION FOR SINKING SHAFTS AND SLOPES. UNDER THE PROPOSED RULE, THERE WOULD BE NO RESTRICTIONS ON THE NUMBER OF SHOTS, WHICH WOULD ENCOURAGE USE OF MORE THAN THE 60 POUNDS OF EXPLOSIVES ALLOWED BY LAW.

## FIRING MORE THAN ONE FACE AT A TIME

MSHA'S PROPOSED REGULATION WOULD PERMIT THE FIRING OF THREE COAL FACES AT ONCE. SUCH PRACTICES WOULD SIMULTANEOUSLY RELEASE AN ENORMOUS AMOUNT OF SURPLUS HEAT AND TOXIC FUMES, AS WAS THE CASE AT R.&R. COAL COMPANY, WHERE THREE MINERS DIED ON AUGUST 15, 1985, OVERCOME BY CARBON MONOXIDE FUMES. THIS PRACTICE ALSO WOULD INCREASE THE POSSIBILITY OF METHANE OR COAL DUST IGNITION AND SHOULD NOT BE PERMITTED. EACH FACE MUST BE BLASTED SEPARATELY TO AVOID THIS HAZARD.

## OCCUPATIONAL HEALTH

### 1. DUST MONITORING

FOR MANY YEARS, WE HAVE ARGUED THAT MINE OPERATORS SHOULD NOT HAVE EXCLUSIVE RESPONSIBILITY FOR MONITORING DUST LEVELS. CYNICISM AMONG OUR MEMBERS ABOUT THE RELIABILITY OF OPERATOR SAMPLES IS WIDESPREAD. IT IS BASED ON OUR MEMBERS' DAILY EXPERIENCE WITH THIS PROGRAM, PLUS SEVERAL CASES OF OPERATOR FRAUD IN MANIPULATING THE SAMPLING PROGRAMS. OPPORTUNITIES FOR FRAUD ARE MANY. FOR EXAMPLE, THERE IS ESSENTIALLY NO WAY FOR MSHA TO PREVENT OPERATORS FROM DISCARDING THOSE DUST SAMPLES THAT THEY BELIEVE SHOW EXCESSIVE DUST EXPOSURE NOR IS THERE AN EFFECTIVE WAY FOR MSHA TO PREVENT OPERATORS FROM TAKING BOGUS SAMPLES (E.G., PLACING A SAMPLER IN THE DINNER HOLE, SAMPLING ON RAINY DAYS ON SURFACE MINES, ETC.) IN ADDITION, IN ONE MSHA DISTRICT (DISTRICT 9), THE DISTRICT MANAGER CONDONED THE PRACTICE OF TAKING DUST SAMPLES INSIDE DUST MASKS.

VIRTUALLY ALL THE ISSUES RAISED BY THE UNION DURING HEARINGS IN 1978 REMAIN PROBLEMS. A RECENT STUDY COMPARING OPERATOR WITH MSHA SAMPLES CONCLUDED THAT THERE WAS SYS

TEMATIC UNDERREPORTING OF RESPIRABLE DUST CONCENTRATIONS BY MINE OPERATORS. AND SEVERAL MINES HAVE OPERATED AT LEVELS ABOVE THE 2.0 $mg/m^3$ STANDARD FOR SEVERAL YEARS WITH INEFFECTIVE ENFORCEMENT BY MSHA.

## 2. CHEST X-RAY SURVEILLANCE

THE CHEST X-RAY SURVEILLANCE PROGRAM IS AN ESSENTIAL INGREDIENT IN PREVENTING BLACK LUNG. THIS PROGRAM IS POORLY MANAGED FOR UNDERGROUND MINERS AND NON-EXISTENT FOR SURFACE MINERS.

A. SURFACE MINERS - IN SPITE OF THE INTENT OF CONGRESS EMBODIED IN THE LEGISLATIVE HISTORY OF THE COAL MINE HEALTH AND SAFETY ACT OF 1969 AND THE MINE SAFETY AND HEALTH ACT OF 1977, SURFACE COAL MINERS ARE STILL NOT COVERED BY THE CHEST X-RAY SURVEILLANCE PROGRAM. RESPONSIBILITY FOR IMPLEMENTING AND MANAGING THIS PROGRAM IS SHARED WITH NIOSH, BUT MSHA HAS DONE NOTHING TO SEE THAT SURFACE MINERS ARE PROVIDED WITH THIS SERVICE.

B. UNDERGROUND MINERS - PARTICIPATION BY UNDERGROUND MINERS IN THE SURVEILLANCE PROGRAM IS UNACCEPTABLY LOW. THE REASONS ARE MANY AND INCLUDE DOMINATION OF THE PROGRAM BY THE OPERATORS. LITTLE HAS BEEN DONE BY MSHA TO ENCOURAGE MINERS TO PARTICIPATE IN THE PROGRAM, WHICH IS ESSENTIAL TO THE EFFORTS TO PREVENT BLACK LUNG.

## 3. NOISE

COAL MINING IS ONE OF THE NOISIEST INDUSTRIES IN THE NATION. HEARING LOSS AMONG MINERS IS WIDESPREAD. WHEN MINERS RETIRE, 60% OF THEM HAVE AT LEAST 25dB HEARING LOSS AND 30% HAVE AT LEAST 40dB HEARING LOSS. NOISE AND HEARING LOSS HAVE BEEN NEGLECTED FAR TOO LONG BY MSHA, A SITUATION WE WOULD LIKE TO SEE CORRECTED.

STANDARDS AND POLICIES FOR PREVENTING NOISE EXPOSURE AND NOISE-INDUCED HEARING LOSS ARE WEAK AND INFERIOR TO OSHA STANDARDS AND POLICIES IN THE SAME AREA. FOR EXAMPLE, MSHA REQUIRES OPERATORS TO IMPLEMENT A HEARING CONSERVATION PROGRAM ONLY AFTER A CITATION HAS BEEN ISSUED (WHICH DEPENDS ON DOCUMENTING NOISE EXPOSURE AT OR ABOVE 92dBA); IN CONTRAST, OSHA REQUIRES A HEARING CONSERVATION PROGRAM WHENEVER NOISE EXPOSURE EXCEEDS 85dBA. AND MSHA'S REQUIREMENTS FOR THE HEARING CONSERVATION PROGRAM ARE SUBSTANTIALLY WEAKER THAN THOSE THAT OSHA REQUIRES.

MSHA HAS MADE SOME IMPROVEMENTS IN CONDUCTING NOISE SURVEYS, RESULTING IN MORE CITATIONS FOR NOISE EXPOSURE. BUT THE NET EFFECT MAY BE NEGATIVE. THOUGH NOISE EXPOSURE IS DOCUMENTED, NOISE CONTROL BY PROPER ENGINEERING IS GIVEN SHORT SHRIFT. OPERATORS ARE NOT BEING REQUIRED TO IMPLEMENT NOISE CONTROL MEASURES AND ARE BEING ALLOWED MERELY TO USE HEARING PROTECTORS -- A KNEE-JERK AND INEFFECTIVE QUICK-FIX. THE BUREAU OF MINES HAS DOCUMENTED NUMERQUS INEXPENSIVE AND EFFECTIVE CONTROLS FOR MOST SOURCES OF NOISE IN THE INDUSTRY. BUT, NOT ONLY IS THIS SECTION OF THE BUREAU SCHEDULED FOR ELIMINATION IN THE ADMINISTRATION'S BUDGET, MSHA IS DOING LITTLE TO SEE THAT THE TAXPAYERS' INVESTMENTS ARE BEING IMPLEMENTED IN ORDER TO PREVENT HEARING LOSS.

## 4. EXPOSURE TO CHEMICALS AND OTHER TOXIC SUBSTANCES

CHEMICALS AND OTHER TOXIC SUBSTANCES ARE USED INCREASINGLY IN THE COAL MINING INDUSTRY -- FOR CLEANING AND MAINTAINING MINING EQUIPMENT, FOR ROOF SUPPORT AND VENTILATION CONTROLS, IN COAL PROCESSING AND ELSEWHERE. MSHA'S STANDARDS, ENFORCEMENT AND EDUCATION ON TOXIC SUBSTANCES ARE SUBSTANTIALLY WEAKER THAN OSHA'S AND NOT SUFFICIENT TO THE TASK.

THERE ARE MANY EXAMPLES OF THESE DEFICIENCIES. THERE IS NO "RIGHT TO KNOW" REGULATION GUARANTEEING THAT MINERS KNOW WHAT MATERIALS THEY WORK WITH. THERE IS NO STANDARD COVERING UNDERGROUND MINERS' EXPOSURE TO ASBESTOS. SURFACE MINERS ARE COVERED BY THE OBSOLETE 2 FIBERS PER CUBIC CENTIMETER (CC) LIMIT. THE CURRENT OSHA STANDARD IS 0.2 FIBERS PER CC, A LIMIT THAT IS BEING CONTESTED AS TOO LENIENT. THERE ARE SEVERAL OUTSTANDING NIOSH CRITERIA DOCUMENTS THAT ADVISE LOWER STANDARDS FOR TOXIC SUBSTANCES THAT MSHA HAS IGNORED FOR MANY YEARS. THESE INCLUDE STANDARDS FOR CARBON MONOXIDE, NITROGEN DIOXIDE, AND ISOCYANATES.

## 5. DIESEL REGULATIONS

DIESEL-POWERED EQUIPMENT IS BEING INTRODUCED INTO UNDERGROUND COAL MINES DESPITE ITS CREATION OF NEW SAFETY HAZARDS, DESPITE ACCUMULATING EVIDENCE THAT DIESEL EXHAUST CREATES SERIOUS LONG-TERM HEALTH EFFECTS AND DESPITE THE ABSENCE OF ADEQUATE FEDERAL REGULATIONS TO GOVERN ITS USE. MINERS ARE BEING USED AS GUINEA PIGS IN THIS EXPERIMENT. WE DO NOT BELIEVE THAT THIS EQUIPMENT BELONGS IN UNDERGROUND MINES BUT, IN THOSE AREAS WHERE IT IS USED, WE HAVE NO ALTERNATIVE BUT TO INSIST ON EFFECTIVE REGULATIONS.

A YEAR AGO, AN INTERAGENCY TASK FORCE, INCLUDING REPRESENTATIVES FROM MSHA, NIOSH, AND THE BUREAU OF MINES, RECOMMENDED THAT MSHA DRAFT REGULATIONS FOR THE USE OF THIS EQUIPMENT. LAST JULY, WE REQUESTED THAT THE AGENCY FORM AN ADVISORY COMMITTEE TO REVIEW THE HEALTH RISKS AS A PRELUDE TO THE REGULATORY PROCESS. IN VIEW OF THE COMPLEXITY OF THE ISSUES, THE INACTIVITY OF THE AGENCY REMAINS A MYSTERY.

## REGULATIONS/CONCLUSION

CONGRESS, IN THE PASSAGE OF THE 1977 MINE ACT, GAVE MSHA CLEAR DIRECTIONS ON THE PROMULGATION OF REGULATIONS. CONGRESS DIRECTED THE AGENCY TO PROMULGATE SPECIFIC REGULATIONS ON: THE PATTERN OF VIOLATIONS (SECTION 104(e)); THE DEVELOPMENT OF TOXIC SUBSTANCE STANDARDS (SECTION 101(c)(6)); RECORD KEEPING STANDARDS FOR EMPLOYEE EXPOSURE TO POTENTIALLY TOXIC SUBSTANCE (SECTION 103(c)); AND OTHER STANDARDS.

THE AGENCY HAS IGNORED THESE CONGRESSIONAL DIRECTIVES FOR NEARLY TEN YEARS. CONGRESS EMPHASIZED THE NEED FOR THE AGENCY TO DEVELOP STANDARDS (SECTION 301) THAT WOULD INCREASE PROTECTION TO MINERS. CONGRESS FURTHER DIRECTED (SECTION 101(a)) THAT "THE SECRETARY SHALL BY RULE... DEVELOP, PROMULGATE AND REVISE AS MAY BE APPROPRIATE, IMPROVED MANDATORY HEALTH OR SAFETY STANDARDS FOR THE PROTECTION OF LIFE AND PREVENTION OF INJURIES IN COAL OR OTHER MINES."

THIS DIRECTION IS QUITE CLEAR. IT MEANT THAT MSHA SHOULD HAVE REVIEWED THE MASSIVE COLLECTION OF RECORDS ON DEATH, INJURY AND DISABILITY OF MINERS AND PROMULGATE RULES TO PREVENT SUCH IN THE FUTURE.

MSHA HAS FAILED IN THESE REGARDS. INSTEAD, THE AGENCY HAS EMBARKED ON ITS OWN MISSION OF SIDE-STEPPING THOSE CONGRESSIONAL DIRECTIVES AND PURSUED THEIR OWN OBJECTIVES. THESE OBJECTIVES WILL RESULT IN DIMINISHED PROTECTIONS FOR MINERS.

THE AGENCY SHOULD BE CLEARLY DIRECTED TO DISCONTINUE THIS REGULATORY COURSE, AND DEVOTE ITSELF TO THE SPECIFIC AREAS CONGRESS DIRECTED -- TO REGULATORY ACTION TO AMELIORATE THE CONDITIONS CAUSING DEATH, DISABILITY AND INJURY TO MINERS.

## CONCLUSION

WE BELIEVE THE STRUCTURE OF THE ACT AS IT STANDS IS SUFFICIENT TO ADDRESS THE ILLS OF THE FEDERAL MINE SAFETY AND HEALTH PROGRAM. WE FOUND THE SAME PROBLEM WITH THE MINE SAFETY AND HEALTH ADMINISTRATION AS DOES THE TOWER COMMISSION IN ITS RECENT REPORT -- THE STRUCTURES ARE SUFFICIENT; THEY SIMPLY WERE NOT USED.

THE AGENCY HAS FAILED TO USE THE ENFORCEMENT TOOLS CONGRESS GAVE THEM; THEY HAVE FAILED TO DEVELOP THE REGULATIONS THAT CONGRESS DIRECTED; THEY HAVE FAILED TO FOCUS THE REGULATORY REVISION ON DEVELOPMENT OF REGULATIONS THAT WOULD PREVENT INJURY AND DEATH TO MINERS, INSTEAD CHOOSING A DIFFERENT COURSE WITH DIFFERENT EFFECTS; THEY HAVE FAILED TO EFFECTIVELY ADDRESS HEALTH AND SAFETY HAZARDS AT SMALL MINES; AND THEY HAVE ALLOWED MSHA DISTRICTS TO TAKE ACTIONS AND APPROVE PLANS WHICH DO NOT PROTECT MINERS.

THERE HAS BEEN A FAILURE OF THE AGENCY TO FOLLOW THE DIRECTIVES OF CONGRESS AND WE ASK THAT CONGRESS REINFORCE THE MESSAGE GIVEN THE AGENCY IN THE PASSAGE OF THE 1977 MINE ACT. THE AGENCY UNFORTUNATELY MUST BE TOLD, AGAIN, THAT THE OBJECTIVE IS TO PROTECT COAL MINERS' LIVES AND THAT IT IS NECESSARY TO ENFORCE BOTH THE LETTER AND INTENT OF THE 1977 MINE ACT. MSHA DOES NOT HAVE THE AUTHORITY TO SUBVERT THAT VALUABLE PIECE OF LEGISLATION. UNFORTUNATELY, THEY MUST BE TOLD THEY LACK THAT AUTHORITY.

WE ALSO REQUEST THAT CONGRESS PROVIDE THE FUNDING NECESSARY TO THE MINE SAFETY AND HEALTH ADMINISTRATION, THE U.S. BUREAU OF MINES, AND THE NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH TO PERFORM THE RESEARCH AND TESTING NECESSARY TO FULFILL THEIR RESPECTIVE MISSIONS IN PROTECTING THE HEALTH AND SAFETY OF MINERS.

ATTACHMENT #1

# Letters to the Editor

*Letters to the Editor are welcomed and will be published, if found suitable, as space permits. Submission of a Letter to the Editor constitutes permission for its publication in the Journal. Letters should not duplicate similar material being submitted or published elsewhere. Letters referring to a recent Journal article should be received within three months of the article's publication. The editors reserve the right to edit and abridge letters, to publish replies, and to solicit responses from authors and others.*

*Letters should be submitted in duplicate, double-spaced (including references), and generally should not exceed 400 words.*

## Trends in Fatality Rates in Bituminous Coal Mines, 1970–85

For 10 years prior to the passage of the Federal Coal Mine Health and Safety Act of 1969,[1] fatality rates for underground bituminous coal mining showed no consistent trend. Fatality rates in surface mining were rising. For 10 years following passage of this Act, fatality rates for both surface and underground mines declined. These findings and a description of the regulatory intervention of the federal government mandated by the Act are described in detail elsewhere.[2]

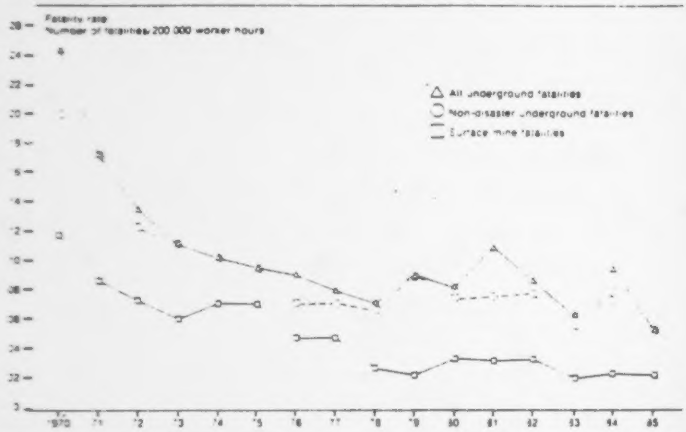
The purpose of this letter is to update our earlier report, to determine if the downward trend of the past decade has continued into the present. It is reasonable to suspect that if fatality rates are reduced by enforcement of coal mine regulations, but regulatory policies are relaxed, progress in reducing fatality rates may decline or stop.

Fatality rates in underground mines show no discernible trend since about 1977, regardless of whether all fatalities or non-disaster fatalities are considered. The overall decline in fatality rates at surface mines appears to persist, but there has been virtually no change in the past three years (Figure 1).

Progress in reducing the risk of fatal injury in underground coal mines appears to have slowed or stopped. Why?

Figure 1

Annual Fatality Rates in Bituminous Coal Mines



These changes may be due to changes in enforcement policy. The present Administration is philosophically opposed to regulatory intervention in the affairs of industry and is equally committed to allowing market forces to have their way. This philosophy has been articulated in many ways.

More quantitative manifestations of these changes are many. Expenditures for enforcement activity have declined slightly in inflation-adjusted dollars, from $52.8 million in FY 1978 to $51.3 million in FY 1984. The total (surface and underground) number of enforcement personnel devoted to coal mine inspections declined from approximately 1,000 in 1978 to 850 in 1984. Projected expenditures into FY 1986 are expected to decline further to $45.3 million. The number of enforcement personnel by mid-1985 had declined to 784.

Allocation of enforcement personnel changed during this period also, as evinced by the institution of so-called technical assistance visits. These are visits to mines during which education and training specialists visit mines but are not authorized to issue citations even when violations of MSHA (Mine Safety and Health Administration) standards are observed. Often, these specialists are recruited from among the ranks of inspectors, thus partially accounting for the decline in the number of inspectors.

The proportion of citations issued as "significant and substantial" (S&S), which require a larger civil penalty, declined in 1981 following a precedent-setting decision by the Federal Mine Safety and Health Review Commission.[3] The proportion of citations classified as S&S declined to 30 per cent immediately following this decision then slowly rose to 45 per cent in 1984. Before this decision, the proportion of citations classified as S&S was about 80 per cent.

Thus, it is tempting to conclude that progress in reducing fatality rates in underground coal mines has declined because the commitment to an aggressive regulatory intervention has declined. Clearly, the two are associated: Other investigators have reached the same conclusion.[4,5] If the initiation of regulation following the 1969 Act is in part responsible for the decline in fatality rates during the 1970s, when regulation is relaxed, it seems reasonable to expect that the decline in fatality rates might slow down or stop, as it seems to have done since about 1977 in underground mines. These trends are consistent with the proposition that regulatory intervention is a useful means of reducing the risk of fatal injury and that if this type of regulation is weakened, progress may stop.

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ATTACHMENT #2

THE WALL STREET JOURNAL TUESDAY, DECEMBER 2, 1986

# *Credibility Gap*

# Some Concerns Fudge Their Safety Records To Cut Insurance Costs

## Consolidation Coal Co. Failed To Report All Its Injuries, Won Awards for Safety

## How Did Bruce Ballard Die?

By BRYAN BURROUGH
And SETH H. LUBOVE
*Staff Reporters of THE WALL STREET JOURNAL*

GRUNDY, Va.—Buchanan County medical examiner Thomas McDonald recalls vividly the visit last fall of four Consolidation Coal Co. officials to his office. The men, who had arrived in this Appalachian hamlet in a black limousine, grilled him on his diagnosis of a miner's death as work-related electrocution rather than—as the company insisted—a heart attack from natural causes.

"It was obvious they would have liked the cause to have been something other than an electrocution," says Dr. McDonald, who says the nation's second-largest coal producer went to extraordinary lengths to distance itself from the death last year of the miner, 25-year-old Bruce Ballard.

Dr. McDonald is one of two doctors who examined Mr. Ballard's body; the other doctor also believes that Mr. Ballard was electrocuted. Nevertheless, Consolidation, a Du Pont Co. unit, ultimately convinced a federal agency that Mr. Ballard died of causes unrelated to coal mining.

### Accolades From Washington

But the miner's death, at an underground coal mine judged the nation's second safest in 1985, suggests that federal safety records can be deceptive. And the actions of Consol, as the company is known in the coal fields, show the lengths to which some companies go to avoid responsibility for industrial accidents, and even deaths.

Consol, which a Washington watchdog group last April judged to have the coal industry's best safety record, has long worked at keeping accidents to a minimum with intensive training programs for workers and awards for managers with clean safety slates. In fact, two Consol mines—Osage No. 3 in West Virginia and the Buchanan No. 1 mine in Virginia, where Mr. Ballard worked—were judged the nation's two safest underground coal mines last July and won the federal government's Sentinels of Safety awards for operating an entire year without an injury involving lost workdays.

But were they accident-free? Several miners at the Osage mine now say they were injured and missed workdays last year. They say they agreed to help cover up their accidents—which ranged from torn shoulder tendons to bruised ribs—by recording missed workdays as vacations or by recuperating at work. Both ploys allow a company to argue that an injured worker never actually missed work.

### A Union's Accusations

Consol officials deny any wrongdoing and insist they have correctly followed federal guidelines. But the company's actions recently have drawn criticism from the federal Mine Safety and Health Administration (MSHA), which has cited the company for failing to report 25 accidents at seven West Virginia and Pennsylvania mines this year, and from the United Mine Workers union, which accuses Consol of trying to cover up accidents. "There's a concern that Consol may be manipulating its accident records on a large scale," says Joseph Main, the United Mine Workers' top safety official.

The use of cover-up tactics appears to be on the rise in many industries. Violations of federal record-keeping statutes have spurted 71% since 1980. In November, the federal Occupational Safety and Health Administration (OSHA) fined Chrysler Corp. $910,000—one of the agency's largest such fines ever—for failing to report 182 job-related injuries at its Belvedere, Ill., assembly plant. Though 3,900 people work at the plant, Chrysler was reporting only about three or four injuries a month.

### Far-Reaching Implications

No one knows how many industrial accidents go unreported. And incidents of under-reporting may be much more numerous than officials suspect. A 1974 federal study of accidents at 140 companies found that 42% weren't reported to the government, and a 1980 OSHA-commissioned study of work-related deaths in North Carolina discovered that 38% went untallied.

The implications of this misreporting are far-reaching. Labor Secretary William E. Brock says: "Too many things depend on it—individual companies' ability to recognize and correct hazards, OSHA's ability to concentrate its resources in areas where the most dangers exist and, ultimately, the safety of the workers themselves."

Both MSHA and OSHA are stepping up scrutiny of accident-reporting records. In the wake of its largest fine ever involving unreported accidents—a $1.4 million levy last April against a Union Carbide Corp. plant in West Virginia for 128 unreported accidents, among other violations—OSHA has alerted its field offices to watch for similar violations and has beefed up record-related training for new agents.

"The Carbide case really opened our eyes," says Leo Carey, OSHA's deputy director of field operations.

Incentives abound to fudge corporate accident records. Among these: skyrocketing insurance bills and the high cost of workers' compensation claims. Salary incentives for managers who maintain good safety records may spur the activity. Fur-

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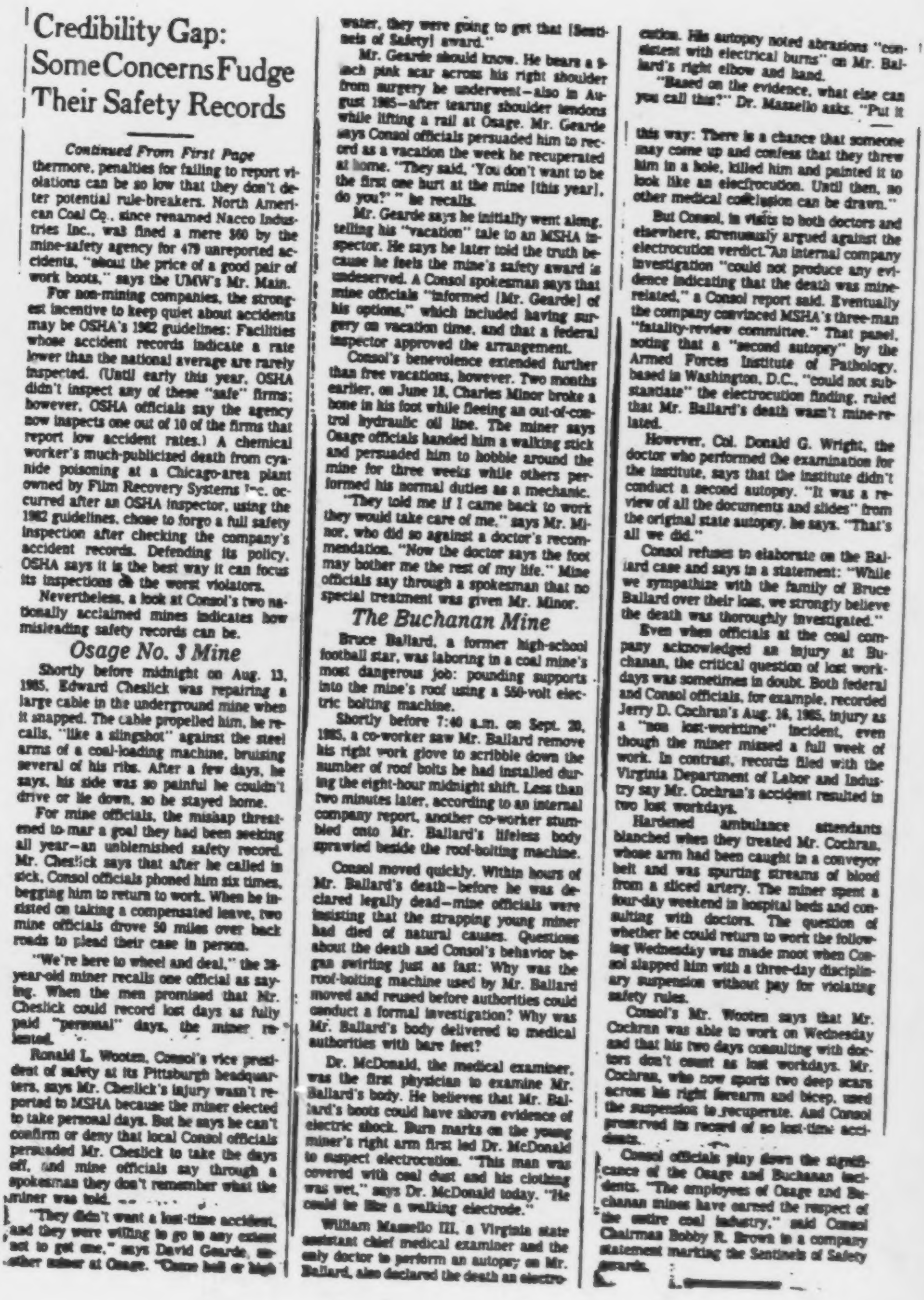

# Credibility Gap: Some Concerns Fudge Their Safety Records

*Continued From First Page*

thermore, penalties for failing to report violations can be so low that they don't deter potential rule-breakers. North American Coal Co., since renamed Nacco Industries Inc., was fined a mere $60 by the mine-safety agency for 479 unreported accidents, "about the price of a good pair of work boots," says the UMW's Mr. Main.

For non-mining companies, the strongest incentive to keep quiet about accidents may be OSHA's 1982 guidelines: Facilities whose accident records indicate a rate lower than the national average are rarely inspected. (Until early this year, OSHA didn't inspect any of these "safe" firms; however, OSHA officials say the agency now inspects one out of 10 of the firms that report low accident rates.) A chemical worker's much-publicized death from cyanide poisoning at a Chicago-area plant owned by Film Recovery Systems Inc. occurred after an OSHA inspector, using the 1982 guidelines, chose to forgo a full safety inspection after checking the company's accident records. Defending its policy, OSHA says it is the best way it can focus its inspections on the worst violators.

Nevertheless, a look at Consol's two nationally acclaimed mines indicates how misleading safety records can be.

## *Osage No. 3 Mine*

Shortly before midnight on Aug. 13, 1985, Edward Cheslick was repairing a large cable in the underground mine when it snapped. The cable propelled him, he recalls, "like a slingshot" against the steel arms of a coal-loading machine, bruising several of his ribs. After a few days, he says, his side was so painful he couldn't drive or lie down, so he stayed home.

For mine officials, the mishap threatened to mar a goal they had been seeking all year—an unblemished safety record. Mr. Cheslick says that after he called in sick, Consol officials phoned him six times, begging him to return to work. When he insisted on taking a compensated leave, two mine officials drove 50 miles over back roads to plead their case in person.

"We're here to wheel and deal," the 38-year-old miner recalls one official as saying. When the men promised that Mr. Cheslick could record lost days as fully paid "personal" days, the miner relented.

Ronald L. Wooten, Consol's vice president of safety at its Pittsburgh headquarters, says Mr. Cheslick's injury wasn't reported to MSHA because the miner elected to take personal days. But he says he can't confirm or deny that local Consol officials persuaded Mr. Cheslick to take the days off, and mine officials say through a spokesman they don't remember what the miner was told.

"They didn't want a lost-time accident, and they were willing to go to any extent not to get one," says David Gearde, another miner at Osage. "Come hell or high water, they were going to get that [Sentinels of Safety] award."

Mr. Gearde should know. He bears a 9-inch pink scar across his right shoulder from surgery he underwent—also in August 1985—after tearing shoulder tendons while lifting a rail at Osage. Mr. Gearde says Consol officials persuaded him to record as a vacation the week he recuperated at home. "They said, 'You don't want to be the first one hurt at the mine [this year], do you?' " he recalls.

Mr. Gearde says he initially went along, telling his "vacation" tale to an MSHA inspector. He says he later told the truth because he feels the mine's safety award is undeserved. A Consol spokesman says that mine officials "informed [Mr. Gearde] of his options," which included having surgery on vacation time, and that a federal inspector approved the arrangement.

Consol's benevolence extended further than free vacations, however. Two months earlier, on June 18, Charles Minor broke a bone in his foot while fleeing an out-of-control hydraulic oil line. The miner says Osage officials handed him a walking stick and persuaded him to hobble around the mine for three weeks while others performed his normal duties as a mechanic.

"They told me if I came back to work they would take care of me," says Mr. Minor, who did so against a doctor's recommendation. "Now the doctor says the foot may bother me the rest of my life." Mine officials say through a spokesman that no special treatment was given Mr. Minor.

## *The Buchanan Mine*

Bruce Ballard, a former high-school football star, was laboring in a coal mine's most dangerous job: pounding supports into the mine's roof using a 550-volt electric bolting machine.

Shortly before 7:40 a.m. on Sept. 20, 1985, a co-worker saw Mr. Ballard remove his right work glove to scribble down the number of roof bolts he had installed during the eight-hour midnight shift. Less than two minutes later, according to an internal company report, another co-worker stumbled onto Mr. Ballard's lifeless body sprawled beside the roof-bolting machine.

Consol moved quickly. Within hours of Mr. Ballard's death—before he was declared legally dead—mine officials were insisting that the strapping young miner had died of natural causes. Questions about the death and Consol's behavior began swirling just as fast: Why was the roof-bolting machine used by Mr. Ballard moved and reused before authorities could conduct a formal investigation? Why was Mr. Ballard's body delivered to medical authorities with bare feet?

Dr. McDonald, the medical examiner, was the first physician to examine Mr. Ballard's body. He believes that Mr. Ballard's boots could have shown evidence of electric shock. Burn marks on the young miner's right arm first led Dr. McDonald to suspect electrocution. "This man was covered with coal dust and his clothing was wet," says Dr. McDonald today. "He could be like a walking electrode."

William Massello III, a Virginia state assistant chief medical examiner and the only doctor to perform an autopsy on Mr. Ballard, also declared the death an electrocution. His autopsy noted abrasions "consistent with electrical burns" on Mr. Ballard's right elbow and hand.

"Based on the evidence, what else can you call this?" Dr. Massello asks. "Put it this way: There is a chance that someone may come up and confess that they threw him in a hole, killed him and painted it to look like an electrocution. Until then, no other medical conclusion can be drawn."

But Consol, in visits to both doctors and elsewhere, strenuously argued against the electrocution verdict. An internal company investigation "could not produce any evidence indicating that the death was mine-related," a Consol report said. Eventually the company convinced MSHA's three-man "fatality-review committee." That panel, noting that a "second autopsy" by the Armed Forces Institute of Pathology, based in Washington, D.C., "could not substantiate" the electrocution finding, ruled that Mr. Ballard's death wasn't mine-related.

However, Col. Donald G. Wright, the doctor who performed the examination for the institute, says that the institute didn't conduct a second autopsy. "It was a review of all the documents and slides" from the original state autopsy, he says. "That's all we did."

Consol refuses to elaborate on the Ballard case and says in a statement: "While we sympathize with the family of Bruce Ballard over their loss, we strongly believe the death was thoroughly investigated."

Even when officials at the coal company acknowledged an injury at Buchanan, the critical question of lost workdays was sometimes in doubt. Both federal and Consol officials, for example, recorded Jerry D. Cochran's Aug. 16, 1985, injury as a "non lost-worktime" incident, even though the miner missed a full week of work. In contrast, records filed with the Virginia Department of Labor and Industry say Mr. Cochran's accident resulted in two lost workdays.

Hardened ambulance attendants blanched when they treated Mr. Cochran, whose arm had been caught in a conveyor belt and was spurting streams of blood from a sliced artery. The miner spent a four-day weekend in hospital beds and consulting with doctors. The question of whether he could return to work the following Wednesday was made moot when Consol slapped him with a three-day disciplinary suspension without pay for violating safety rules.

Consol's Mr. Wooten says that Mr. Cochran was able to work on Wednesday and that his two days consulting with doctors don't count as lost workdays. Mr. Cochran, who now sports two deep scars across his right forearm and bicep, used the suspension to recuperate. And Consol preserved its record of no lost-time accidents.

Consol officials play down the significance of the Osage and Buchanan incidents. "The employees of Osage and Buchanan mines have earned the respect of the entire coal industry," said Consol Chairman Bobby R. Brown in a company statement marking the Sentinels of Safety awards.

THE WALL STREET JOURNAL FRIDAY, MARCH 6, 1987 3

# *Consolidation Coal Is Accused by U.S. Of Hiding Injuries*

By BRYAN BURROUGH

*Staff Reporter of* THE WALL STREET JOURNAL

Consolidation Coal Co., the nation's second-largest coal producer, was cited by the federal mine-safety agency for "reckless disregard" in failing to report worker injuries at the coal mine judged the nation's safest in 1985.

The Mine Safety and Health Administration indicated that, if the citations are upheld by an agency review committee, it will revoke the prestigious Sentinels of Safety award held by the mine, Osage No. 3 in West Virginia, as the nation's safest underground coal mine. The award is given to the U.S. coal mine that operates the most hours during a year without an injury involving lost workdays.

In addition, the agency, citing the severity of the violations, said it is studying the possibility of a special fine against Consolidation of up to $40,000, or $10,000 for each citation. Ordinarily, such "technical violations" draw fines no higher than $20, but the paltry penalties have drawn criticism from some congressmen.

The agency's actions follow a report in The Wall Street Journal in December that Pittsburgh-based Consolidation, a Du Pont Co. unit, covered up accidents at Osage No. 3 to preserve the illusion of a spotless safety record. Several workers at the mine said they agreed to help cover up their accidents—which ranged from torn shoulder tendons to bruised ribs—by recording missed workdays as vacations or by recuperating at work.

The citations are the latest moves in the Labor Department's campaign against companies that don't properly report industrial accidents. The department has recently pursued fines against several big companies, including Union Carbide Corp. and Chrysler Corp., for allegedly failing to report hundreds of accidents at their plants.

Employers sometimes fudge corporate accident records in an effort to avoid federal inspections and reduce insurance and workers compensation costs.

Consolidation's Osage mine was cited for "reckless disregard" for failing to report lost-workday injuries involving three workers between June 1985 and September 1985, including one miner who missed three weeks of work after tearing shoulder tendons and was persuaded by the company to record it as a vacation. The safety agency also cited the company's Buchanan No. 1 mine in Virginia—judged the nation's second-safest—for "high negligence" in filing an "inaccurate form" that said a worker whose arm was nearly severed in a mining accident missed no workdays.

A Consolidation spokesman said the company "strongly disagrees" with the citations and will appeal them. He pointed out that federal inspectors conducted "an intensive and complete . . . audit" at both Buchanan and Osage in late 1985 before naming the mines the nation's two safest. "For reasons unknown to us, the Department of Labor in Washington now has rejected the audits," he said.

The CHAIRMAN. Thank you very much, Mr. Trumka, for an absolutely eloquent analysis of the situation. I think you have very, very passionately, knowledgeably, and convincingly made the case about the real challenge which that agency has before it.

I really just have a couple of questions for you. The stories that we heard yesterday about those activities out in the field, were those really typical, from your own knowledge, or were they very special and unique? You know, sometimes people like to say, well, you can look and carefully select just a few witnesses and a few conditions and try and make a case, but that really does not represent what is really happening out across the country, in this case, in the mines.

Is it your own impression, based upon your experience, and the people that you talk to in the mines and in the industry, do you really feel that that is the tip of the iceberg?

Mr. TRUMKA. Without qualification, Senator, I believe that it is the tip of the iceberg; that the cases that have been cited are representative of far, far greater activity along the same lines throughout all the MSHA districts.

There are bright spots. There are individuals who would like to enforce the law, but they are told by deed, not necessarily word every time, that enforcing the law is not what the agency has wanted; that word has gotten down to the inspectors at the lowest levels—and it is wide-ranging, widespread, and covers not just Eastern Kentucky where I think you will find the greatest area, but it includes Southern Virginia, Alabama, Pennsylvania, West Virginia, Ohio, Illinois, out West, particularly MSHA District 9 has a dismal record, as shown in my testimony. And further examples, we could give you chapter and verse if the Senator is willing to have us submit additional testimony.

The CHAIRMAN. Sure. We will take whatever additional material you think would be helpful to us. I think the case has been very convincingly and powerfully made, and it is certainly my observation that you could have day after day of these kinds of hearings and point out the problems, as you have stated them so well.

Let me say, as we come to the conclusion of this part of our hearing, that I want to work with you on the enforcement provisions. My initial concern as I was listening to you talk about the special prosecutor—and we would like to review that with you—is what happens after that special prosecutor's time has expired. Will we go right back into the current situation?

It would seem to me that we need something ongoing and continuing and persistent in terms of the investigations and the prosecutions, both of the kinds of egregious conditions that we have heard testified to in our hearings yesterday and today and other activities, and that is something that we want to work with you on. We want to discover the best way to have a successful investigation of these types of unconscionable activities, and the prosecution of those that have been involved with them, and then to set up the enforcement procedures that would be ongoing and continuing and carrying forward the letter and the spirit of the law which the Congress has enacted.

So I would like to work with you on it, and I want to talk with the other members of our Committee who were here this morning about what the particular mechanism is.

I want to give you assurance that that is a top matter in my priorities, and let me work with you on that particular issue.

This hearing is the third held by the Committee since September on the Mine Safety and Health Administration. In that time we have discovered that the agency has engaged in an illegal and deadly plan to reduce the protection workers receive from regulations produced by MSHA itself. We have discovered that MSHA officials have systematically undermined enforcement activities. And there is more to it than the limited instances of corruption. The best investigative group in the agency was disbanded for enforcing the law. At the highest levels of the agency, enforcement officers have received the signal that wrong-doing by coal operators was to be overlooked.

We have discovered that the rewards of promotion and power are often given to those who do the most to weaken the law. Men are dead because this agency is deficient, and more miners will die unless this agency is reformed. I applaud the efforts of Assistant Secretary McMillan to institute an accountability system for the agency as well as a couple of other reforms and reviews that have been undertaken. But frankly, the accountability system was not even proposed until this morning, when a page concerning it was added to Mr. McMillan's prepared testimony. It is no secret that the other reforms was launched as a panic response to this investigation.

What this agency needs is structural reform, not paper policies, not more reviews, not more studies. What this agency needs is planning and foresight, not afterthought and coverup.

To that end, I call on Mr. McMillan to respond without delay to the recommendations contained in the letter from Mr. McAteer to Secretary Brock. I will call Secretary Brock this afternoon and personally request his response to that, share it with other members of the Committee, the Mine Workers, and other interested personnel.

I call on Mr. McMillan to adopt the regulations recommended by the MSHA expert advisory panel. I think the case has been powerfully made for those.

I call on the staffs and the Senators of this Committee to work with me and to work with you to insulate the investigation of multiple fatalities and criminal charges from the rest of MSHA and from those it regulates.

We should be deliberate in these efforts, but we must be speedy as well. We do not know their names today, but as surely as Mrs. Myers' husband and Mr. Simpson's son lost their lives because this agency lost its spine, there are miners who will die if the agency's present course continues.

This Committee will be watching. We want action soon, before another body is laid at the doorstep of this agency.

I am told our last witness is John Knebel, of the American Mining Congress. I understand that Mr. Knebel may be unable to make it today, but I understand there is a witness from the AMC present. We are going to have to recess the hearing, and we will hear from you this afternoon.

The Committee will stand in recess until 2:30.

[Whereupon, at 1:00 p.m., the Committee was recessed, to reconvene at 2:30 p.m. this same day.]

### AFTERNOON SESSION

Mr. ROLLINS. The Committee will come to order.

Senator Kennedy is unable to make it to chair this hearing and we have been unable to locate another Senator because of prior commitments, so I will call the meeting to order.

My name is Tom Rollins. I am Chief Counsel and Staff Director of the Committee, so I will take the testimony of the American Mining Congress.

Mr. Knebel, please come forward and let us hear your testimony.

## STATEMENT OF JOHN A. KNEBEL, PRESIDENT, AMERICAN MINING CONGRESS

Mr. KNEBEL. Thank you.

I believe that in the interest of time I will request that our statement be printed in the record, including the charts, and also the testimony which we offered to this Committee under similar circumstances last September.

Mr. ROLLINS. That will be done.

Mr. KNEBEL. I would also very briefly like the opportunity, if you do not mind, to summarize our thoughts and to give you a bit of our feeling.

I am the President of the American Mining Congress, an industry wide association representing more than 500 of our nation's mining companies and the manufacturers of mining equipment.

We appreciate the opportunity to present the views of America's mining industry.

Regardless of what you have heard to the contrary in these hearings, let there be no mistake or misunderstanding: the mining industry is totally committed to protecting the safety and health of its employees.

At the same time, we are vitally committed to restoring the domestic mining industry to a competitive spot in world trade. The importance of mining to the nation cannot be overemphasized. As you may know, the mining industry is just beginning to emerge from a severe economic downturn which began in 1979. Since that time, we have seen mine closings which have reduced the work force, and which have had very, very severe consequences.

At the present time, we are seeing restructuring, consolidations, and workouts which are beginning to have a positive effect, and while most of our problems may indeed have been due or occasioned by low cost foreign competitors, who play by a different set of rules, more than a few of our concerns and problems have been occasioned by the activities of our own Government.

Safety is a case in point. As you know, the United States has the safest mining industry in the world. We believe that is due to the strong commitment of the leaders in our industry and it would be even better if the Federal Government would take the opportunity to update its regulations. In point of fact, I wonder whether MSHA is properly allocating its resources with respect to enforcement. As I said earlier, since 1979, MSHA lost very little ground in its budget. As a matter of fact, notwithstanding the fact that the number of miners has been reduced by a third, MSHA's budget continues to grow. At that point in time, (1979) some $400 per miner was spent in enforcement activity. Today, that number is up to about $600.

Similarly, there has been a 530 percent increase in non-coal enforcement activities. I believe from the industry perspective that enforcement expenditure is disproportionate insofar as large, safe mining operations are concerned, and there is far too little with regard to inspecting the Saturday night miner.

As I said earlier, most of the MSHA regulations are now nearly 20 years old. We have been in the vanguard of giving proposals to MSHA with the suggestion that they update those regulations, and we are delighted with that role. We feel it is the responsibility of the mining industry to step forward and to help the Government to put enforcement above partisan politics. Would that the Committees of the Congress let MSHA get on with it, and the unions also step aside from politics and let this revision and rewrite proceed. I think if that comes to pass, we can indeed have an even safer mining industry than we have today.

I believe that in essence summarizes the main points of what we have. I would commend to the Senators' attention and the staff as well, our full statement. I appreciate once again your accommodating my schedule. If you have any questions, I will be delighted to endeavor to answer them.

[The prepared statement of the American Mining Congress as presented by Mr. Knebel and the charts referred to follow:]

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John A. Knebel
President

AMERICAN MINING CONGRESS

EXHIBITS

SUPPORTING TESTIMONY PRESENTED

BEFORE

THE SENATE LABOR & HUMAN RESOURCES

COMMITTEE

March 12, 1987

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## AMERICAN MINING CONGRESS
## TESTIMONY BEFORE THE
## SENATE LABOR & HUMAN RESOURCES COMMITTEE
## OVERSIGHT HEARING
## ON
## THE MINE SAFETY AND HEALTH ADMINISTRATION
## SEPTEMBER 25, 1986

Good afternoon. I am Patrick M. Ryan, director-loss prevention and administration, for AMAX Coal Company. Testifying with me on behalf of the American Mining Congress (AMC) is Bobby J. Jackson, director of safety for ASARCO Inc. Accompanying us is Henry Chajet, AMC senior counsel.

We appreciate the opportunity to appear before you and discuss important issues relative to mine safety and health. The American Mining Congress is a national trade association representing the mining industry. Its 400 member companies are the producers of the vast majority of the nation's coal, metals, industrial and agricultural minerals; as well as the manufacturers of mining equipment and supplies.

AMC's Declaration of Policy recites our commitment "to strive continuously to promote and provide a safe and healthful working environment," and pledges our organization's continued efforts "in achieving the common goal of all parties involved in safety and health: the protection of the workforce."

The achievement of this goal, however, requires not only the dedication and commitment of mine operators and employees, but also an efficient and effective Mine Safety and Health Administration. Although we believe that MSHA has, in good faith,

AMC EXHIBIT 15

attempted to carry out its mission under the 1977 Mine Safety Act, significant improvements are needed.

## Coal Enforcement

The Act's enforcement provisions include mandatory inspections regardless of site-specific hazards or needs. There have been allegations that mandatory inspections are not always completed for all mines and that MSHA needs additional personnel. We view these allegations as a distraction from the real issue: the need to focus enforcement resources on high risk locations and on serious hazards.

From our perspective, MSHA spends too much time at many of our operations with exemplary safety records. Many safe mines have full-time MSHA inspectors on the property almost every day. We do not believe that when Congress mandated four yearly underground inspections and two yearly surface inspections, it intended an excessive presence at safe mine sites.

For example, the safest underground coal mine in the country, declared the winner of the Sentinels of Safety Award for 1985, experienced 308 federal inspector shifts and 58 state inspector shifts in 1985.

At one AMAX Coal Company underground mine we employ about 870 miners and produce in excess of two million tons per year. Our safety record is better than the national average, and we are constantly striving to improve it.

Last year this mine recorded 369 MSHA inspector shifts and 101 state inspector shifts. Through August of this year, we have recorded 316 federal inspector shifts and 78 state inspector shifts. Other large mines report a far greater MSHA presence.

This excessive inspector presence often results in unnecessary and inappropriate enforcement actions. On June 6, 1986, AMC wrote to Assistant Secretary Zegeer and relayed our concerns regarding the inappropriate use of MSHA's powerful enforcement tools. In that letter we set forth a series of examples of abusive enforcement. One of them will demonstrate our concern.

Three citations were issued to a mine, one for each shift, for failure to conduct required quarterly fire drills. The mine was one week overdue and clearly only a technical violation existed. Yet, the inspector issued three separate "significant and substantial" violations, defined by law as a reasonable probability of causing a reasonably serious injury or death.

As you know, the 1977 Mine Safety Act provides for a graduated enforcement scheme whereby all violations must be abated, but the severity of enforcement is dependent upon the gravity of the violation. Yet, the industry has witnessed an effort by MSHA to apply its more severe enforcement tools without the requisite examination regarding the gravity of the violations involved.

Prior to a landmark Mine Safety and Health Review Commission decision in April 1981, it was MSHA's policy to consider all but technical violations "significant and substantial". This categorization is the trigger mechanism for increased penalties, and the Act's closure order enforcement provisions. When the Review Commission rejected this policy, it instructed MSHA inspectors to analyze each violation according to the circumstances surrounding them and to use discretion in determining the seriousness of each violation.

About a year after the decision rejecting MSHA's policy, the percentage of "significant and substantial" violations on a nationwide basis dropped to approximately 23%. Today, 64% of all coal violations are categorized as "significant and substantial", and in several MSHA districts the percentages range from 76% to 86% [See Exhibit 1]. This trend of increasing severe enforcement was not precipitated by any evidence of deteriorating safety performance and appears contradictory to the directions of the Review Commission.

Just as troubling is the trend of increasing numbers of "unwarrantable failure" citations and mine closure orders. As you know, this is one of MSHA's most powerful enforcement tools and can result in significantly higher penalties and the interruption of production by the closure of an entire mine or a section of a mine. Yet, MSHA interprets the term "unwarrantable failure" to mean that the operator "should have known" the violation existed (i.e. ordinary negligence). From 1983 to 1985, the number of unwarrantable failure citations and closure orders in coal essentially doubled (2012 v. 3990), and three of 19 local MSHA subdistricts accounted for about one-half of the total.

Again, examples will demonstrate our concern. An unwarrantable failure to comply with a closure order was issued for failure to have an approved reflector on the back of a water car. Another was issued for failure to conduct a six-month examination of a fire extinguisher. Similarly, "unwarrantable failure" citations and orders were issued even though the operator had discovered, and was found to be in the process of abating, a clean-up violation. We do not believe Congress really intended the term "unwarrantable failure" to be used in this fashion. We would hope that when legislation uses language of this strength and clarity, it would not be applied to technical violations and would be reserved for situations that present serious hazards and result from a high degree of negligence.

While coal enforcement severity increased over the last few years, the total number of coal industry violations issued remained relatively stable and the industry was as safe or safer than in the past [See Exhibits 2 and 3].

We do not believe there is any justifiable reason for the growing number of severe enforcement actions taken by MSHA. And, we believe that inappropriate or abusive enforcement is counterproductive to the goals of the Act. Inappropriate and abusive enforcement distracts from necessary, cooperative efforts and results in an improper focus on nonserious problems.

In the 97th Congress, Senator Hatch introduced S. 1423, entitled the "Mine Safety and Health Reform Act of 1981." That bill contained reasonable definitions of the terms "significant and substantial" and "unwarrantable failure" that we believe are necessary to ensure fair enforcement of the Mine Safety Act by focusing MSHA's more severe enforcement tools on serious hazards.

Senator Hatch's bill also would have reduced the number of mandatory inspections to twice a year for underground mines, and once a year for surface mines. In addition, this provision of the bill would have required inspectors to review the operator's site-specific accident history to determine the principal focus of the inspection, and direct his inspection primarily toward those causes of accidents revealed in such site-specific accident history.

We believe that these amendments and others contained in S. 1423 would have served the purpose of mine safety by creating a more efficient and effective approach for the agency.

Mr. Jackson will present the remainder of our testimony.

## Metal and Nonmetal Enforcement

The metal and nonmetal segment of the mining industry has also experienced excessive inspector presence in many safe mines and numerous incidents of abusive and inappropriate MSHA enforcement. But, we are fortunate that these incidents have not been as extensive as those reported by the coal industry. We agree wholeheartedly, however, that significant improvements in the federal mine safety program are essential to achieve the goals of the 1977 Act.

Before the landmark Review Commission decision in 1981, about 90% of all metal/nonmetal violations were categorized as "significant and substantial." About a year after the decision, the number dropped below 20%. Today, approximately 40% of the violations issued to the metal/nonmetal industry are "significant and substantial." While this number is lower than the coal industry statistics, it is, nevertheless, troubling. Also troubling is the fact that the number of metal/nonmetal violations issued in the first half of 1986 (13,795) is almost equal to the total number of violations issued in 1983 (14,746), despite the fact that numerous mines have closed during this period [See Exhibit 2]. Since the industry's safety record continues to improve, we believe there is no justification for the increase in either the severity or the quantity of the violations issued.

Inspector presence at many safe metal and nonmetal mines is excessive and unnecessary. We also have experienced almost full time, permanently assigned inspectors, in part due to the closure of operations without a redistribution of inspector personnel. And, we concur that allegations of the agency's failure to complete mandated inspections, or need for more personnel,* are a distraction from the true issue: the need to focus enforcement resources on high risk locations and on serious hazards.

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* Exhibits 4 and 5 demonstrate that the ratio of the number of miners to inspectors has remained relatively stable.

## Regulatory Reform

Since MSHA's creation in 1978, there have been three Assistant Secretaries of Labor for Mine Safety and Health. Each one has acknowledged the need for regulatory reform, including Mr. Zegeer, who is the first Assistant Secretary with a mining background, and is particularly qualified to understand the impact of mine safety standards. The vast majority of the standards in place date back to the 1969 Coal Mine Safety and Health Act, or the 1966 Metal Mine Safety Act. Many of them are technologically outdated, vague, or inappropriate. And, importantly, many of the standards were not intended to be used under the strict enforcement scheme that exists today.

In its Declaration of Policy, the American Mining Congress sets forth the philosophy of its 400 member companies: support for "prompt regulatory and legislative reform that will permit the government to focus its finite resources on true problem areas, and will eliminate unwarranted burdens on industry." We have, and will continue to:

> Provide meaningful contributions to such reform efforts and to encourage standards and product approval requirements that:
>
> o Recognize differences in mining methods, conditions and processing operations;
>
> o Offer flexibility in reducing safety and health risks;
>
> o Allow for the introduction of new technology; and
>
> o Incorporate clear and concise performance requirements.

Although we have been encouraged by the initiation of the regulatory reform process, we have been extremely disappointed in the pace of MSHA's regulatory activity. For approximately 15 regulatory reform efforts initiated by MSHA since 1980, we have seen only two final rules.

We realize that there are inherent delays in the government's efforts due to the statutory procedures and the various clearance processes that must be followed. Yet, although we believe that MSHA has made progress in streamlining the process, we view the pace of reform as intolerably slow.

While we patiently wait for regulatory reform, technology is stymied, flexibility in achieving safety is prevented, costs unnecessarily escalate, and, most importantly, the cause of safety is ill-served.

An example of the problem is the comprehensive revision of approval standards that manufacturers of underground mining equipment are seeking. Another is the request by mine operators for a formal mine plan approval system. For these and other pending reforms, we urge prompt release of fair and performance-oriented proposed rules so we can move forward with new technology and flexibility that will enhance safety.

On July 26, 1983, the American Mining Congress testified before the Senate Subcommittee on Labor. At that time, the Chairman of AMC reported on the decline and the depressed state of the mining industry. For many segments of our industry, the situation has worsened.

---

| | PRIMARY PRODUCTION (000 MT) | | APPARENT CONSUMPTION[1] (000 MT) | | EMPLOYMENT | |
|---|---|---|---|---|---|---|
| | **1979** | **1985** | **1979** | **1985** | **1979** | **1985** |
| ALUMINUM | 4,556 | 3,500 | 5,341 | 4,883 | 23,000 | 19,000 |
| COPPER | 1,515 | 1,125 | 2,339 | 2,166 | 41,000 | 15,900 |
| LEAD | 578 | 489 | 1,256 | 1,148 | 5,500 | 3,000 |
| MOLYBDENUM | 65.3 | 48.5 | 33.4 | 14.1 | 4,800 | 2,300 |
| ZINC | 472 | 225 | 929 | 960 | 9,000 | 4,500 |
| STEEL | 123,651 | 80,740 | 121,564 | 97,705 | 735,000[2] | 262,800[2] |
| **TOTAL** | **130,837** | **86,128** | **131,462** | **106,876** | **818,300** | **307,500** |

1/ Apparent consumption equals U.S. production, plus imports, minus exports and adjustments for inventory changes

2/ Includes employment in iron ore mining

Source: U.S. Bureau of Mines Mineral Production Summaries

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It is the policy of the United States, as declared by the National Materials and Minerals Policy, Research and Development Act of 1980, to encourage private enterprise to develop a stable and economically sound domestic mining industry. The full implementation of this policy is necessary to assure the prosperity and survival of the industry and our nation.

The achievement of our safety and health goals can be consistent with our national policy to maintain a viable mining industry, if we improve the effectiveness and efficiency of the federal program. We will continue to make every effort to increase cooperation and resolve the issues that we have discussed today.

For example, with MSHA's assistance AMC is currently sponsoring a series of regional seminars to address enforcement policy and produce what we hope will be a better understanding of the mine safety laws. Along with employee representatives, AMC recently participated in an MSHA training program for its senior management officials that we hope contributed to improved communications and cooperation.

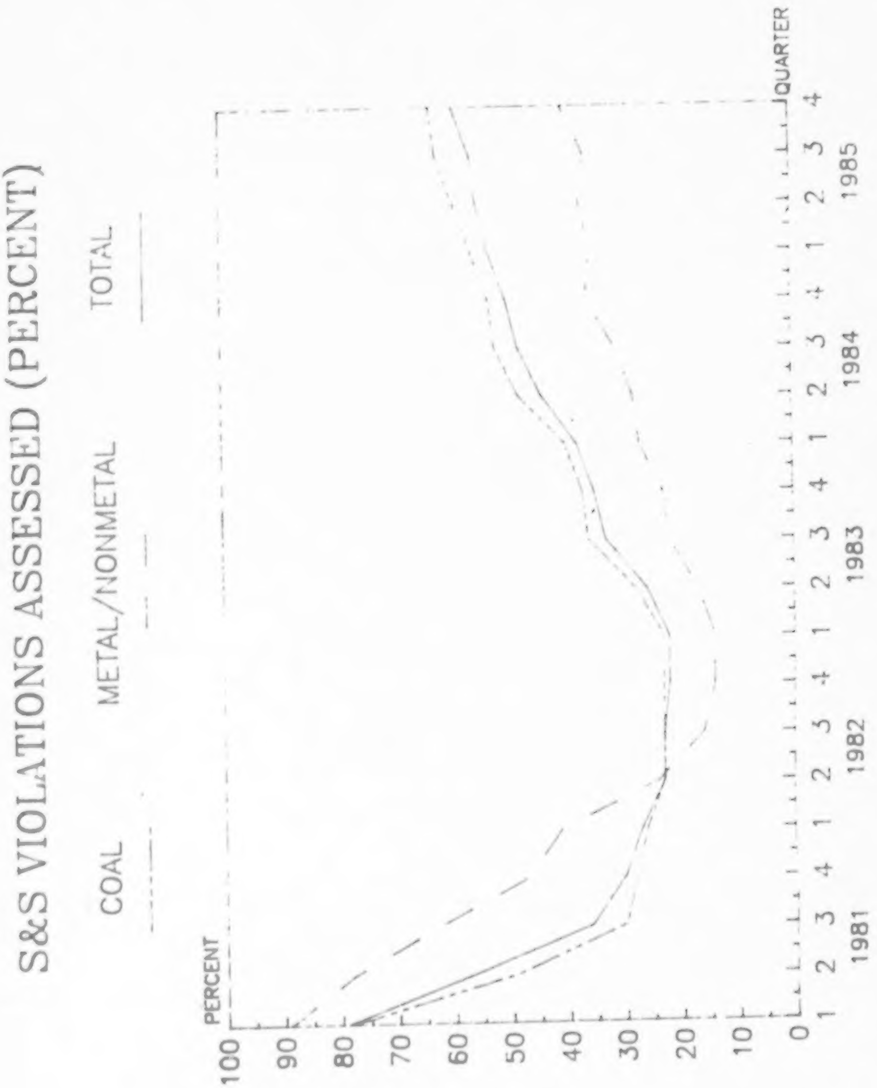
The member companies of AMC are proud of our training programs and the technical sessions that AMC offers industry personnel at our yearly conventions and conferences. And, we believe that they assist in promoting mine safety through the sharing of important information. We are also proud of AMC's cosponsorship with MSHA of the Sentinels of Safety Award Program that recognizes outstanding safety achievements and serves as a model for the entire industry.

We intend to continue our efforts and hopefully expand and improve them. However, legislative and administrative initiatives are essential to change the course of the federal mine safety program.

As we stated when we testified in 1983: "It is ironic that the most common complaint from industry professionals is that their energies have been diverted from real safety and health concerns." With the agency's overemphasis on enforcement, excessive presence in safe mines, and in many cases abusive enforcement, cooperation has been hindered and a misallocation of resources has occurred. We look forward to working with this Committee to reform the federal mine safety program.

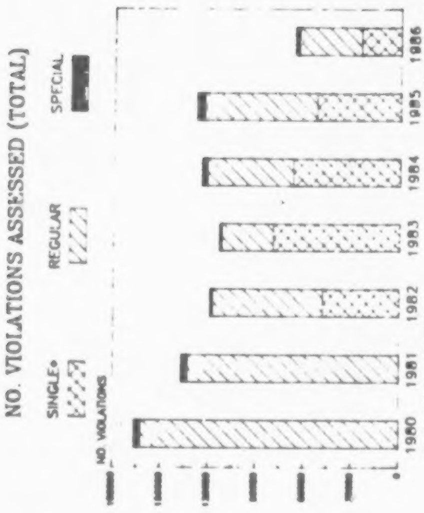
Thank you again for the opportunity to present our views.

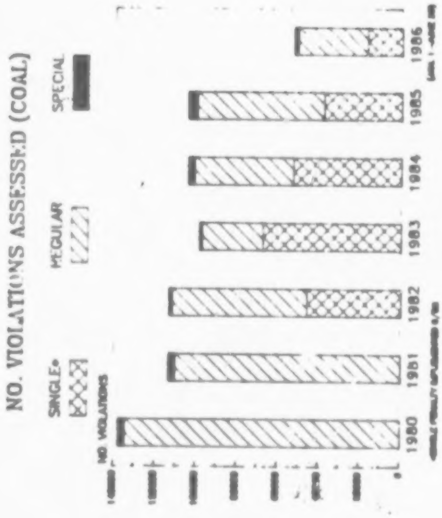
Exhibit 1

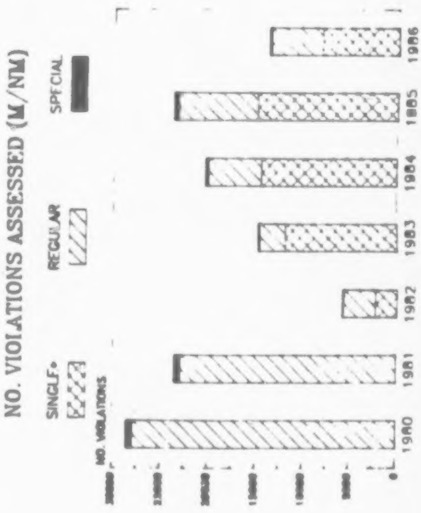


Source: MSHA Report -- "Updated Summary Information on the Status of the Assessment Program." July 23, 1986.

Exhibit 2

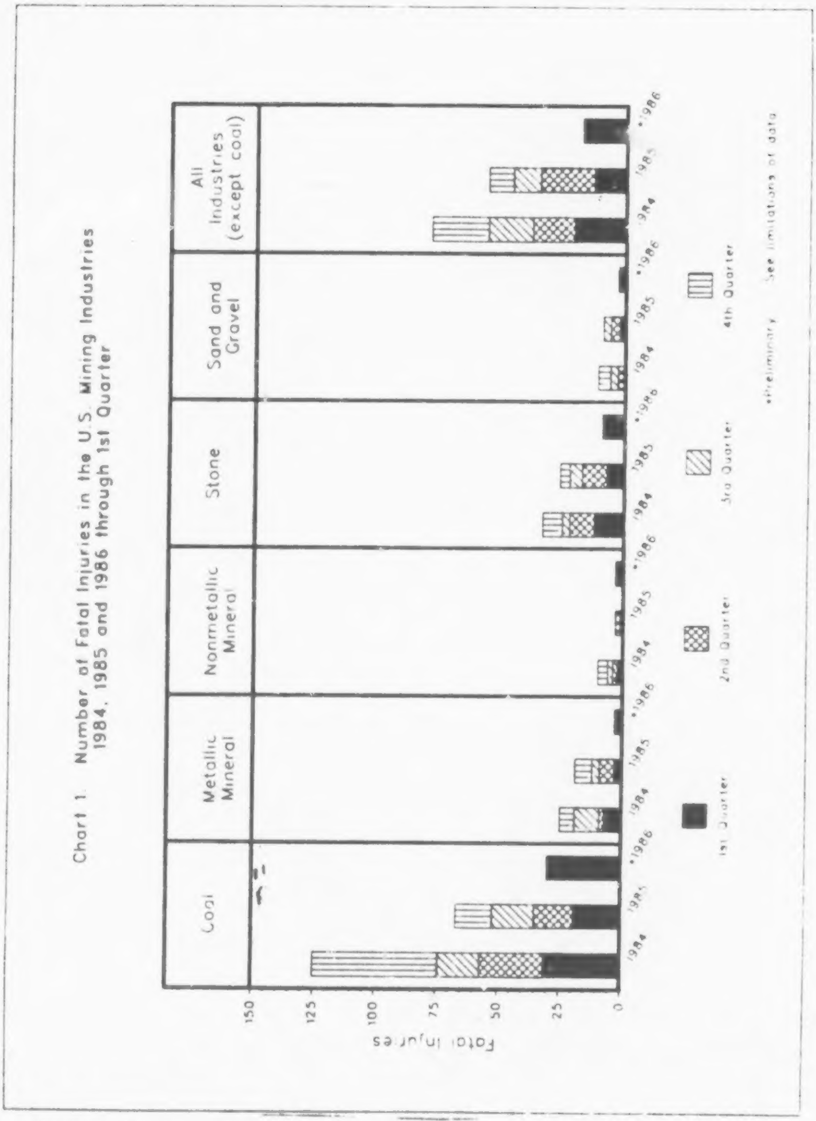






MSHA Report -- "Updated Summary Information on the Status of the Assessment Program." July 23, 1986.

Exhibit 3



Source: MSHA Report -- "Mine Injuries and Worktime Quarterly," January-December 1986.

Exhibit 4

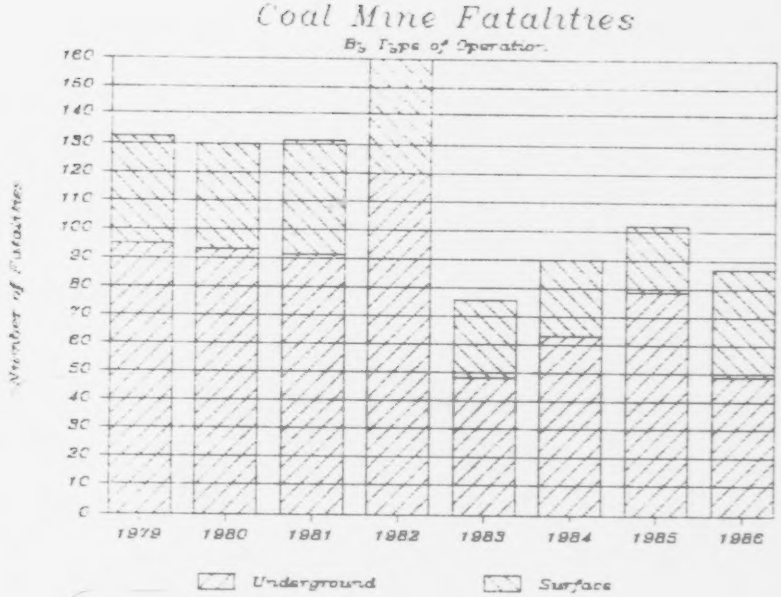
### AMERICAN MINING CONGRESS
### MSHA INSPECTORS AND MINING EMPLOYEES BASED ON MSHA DATA
### COAL

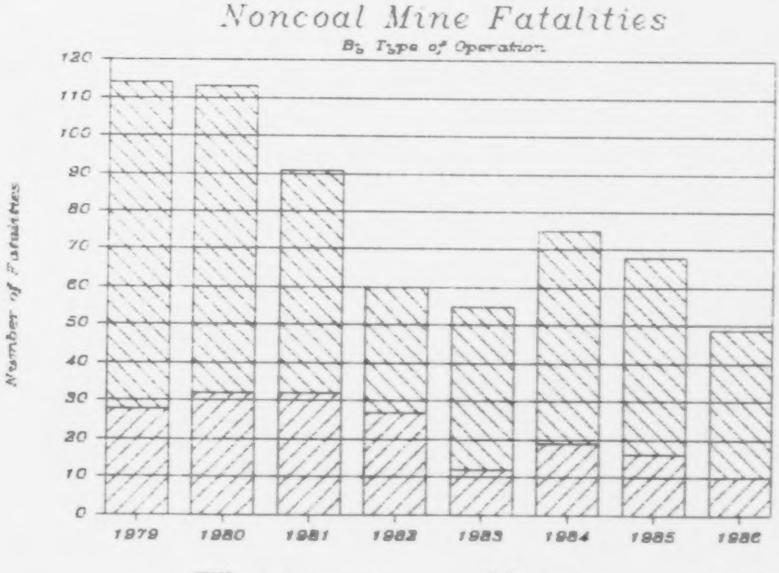
| | 1981 | 1982 | 1983 | 1984 | 1985 |
|---|---|---|---|---|---|
| Number of Inspectors | 909 | 830 | 876 | 868 | 786 |
| Number of Workers | 249,738 | 241,454 | 187,973 | 193,167 | 175,938 |
| Number of Employees per Inspector | 275 | 291 | 215 | 223 | 224 |

Exhibit 5

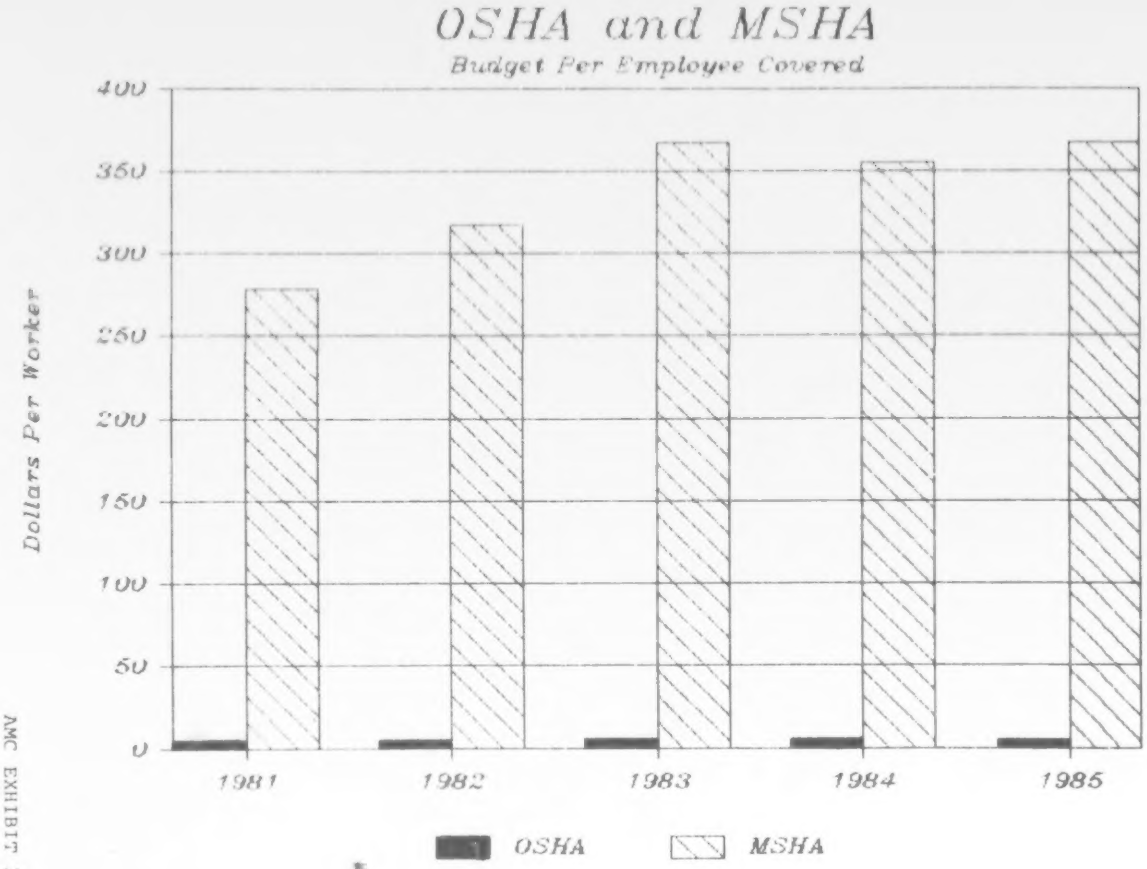
## AMERICAN MINING CONGRESS
## MSHA INSPECTORS AND MINING EMPLOYEES BASED ON MSHA DATA
## NONCOAL

| | 1981 | 1982 | 1983 | 1984 | 1985 |
|---|---|---|---|---|---|
| Number of Inspectors | 517 | 332 | 324 | 320 | 312 |
| Number of Workers | 296,848 | 230,025 | 201,960 | 206,196 | 191,132 |
| Number of Employees per Inspector | 574 | 693 | 623 | 644 | 613 |

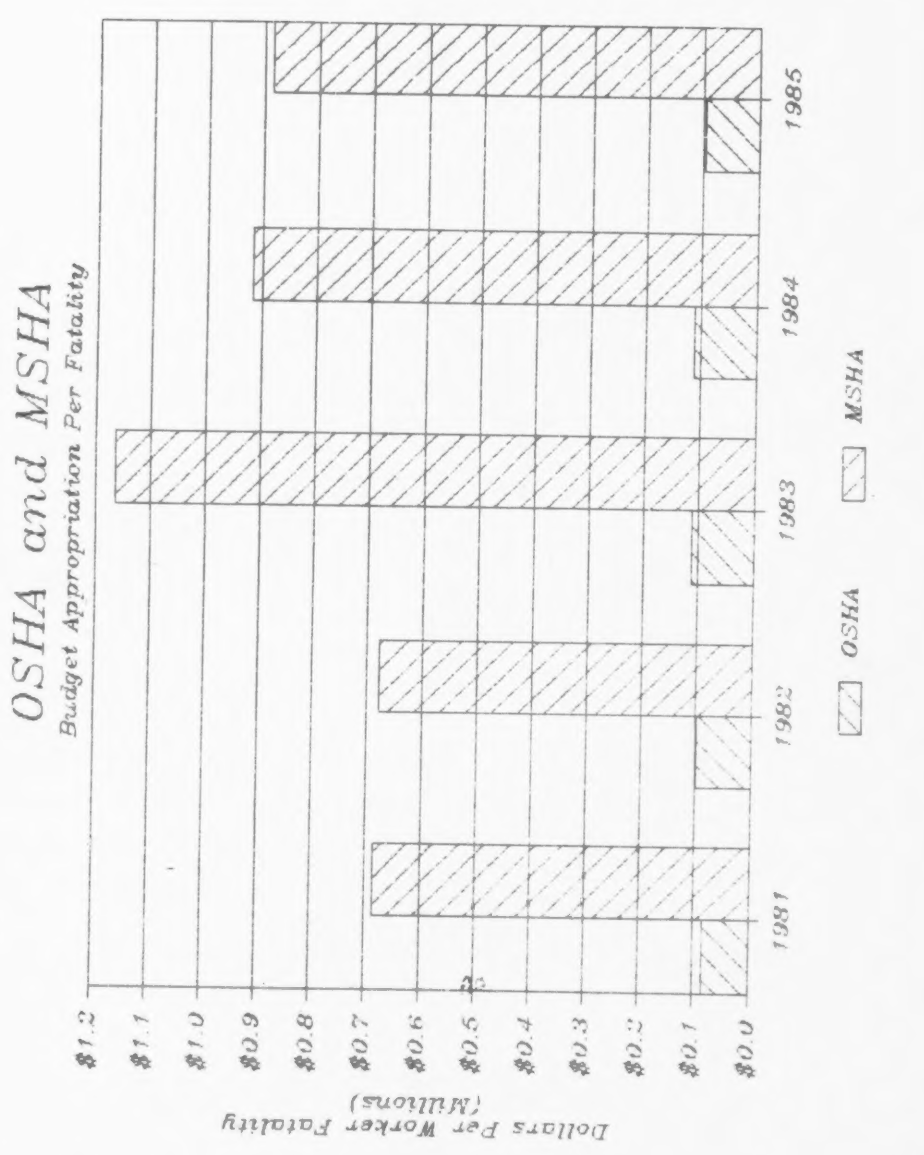




AMC EXHIBIT 1



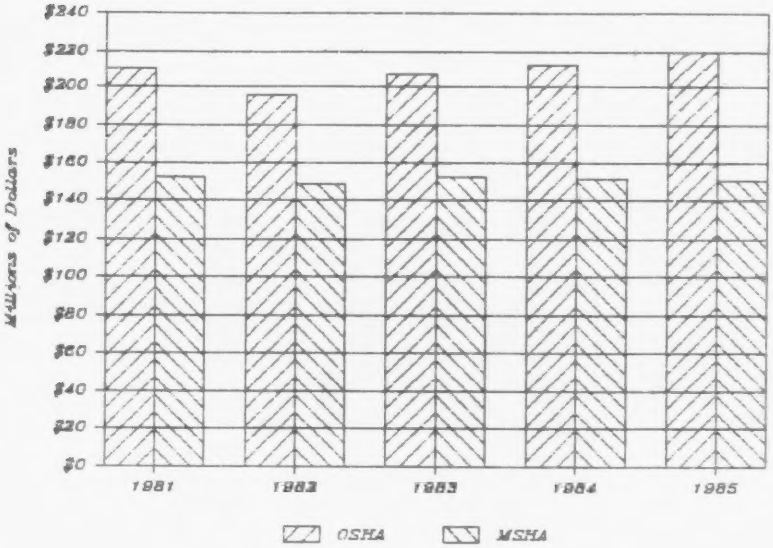
AMC EXHIBIT 2



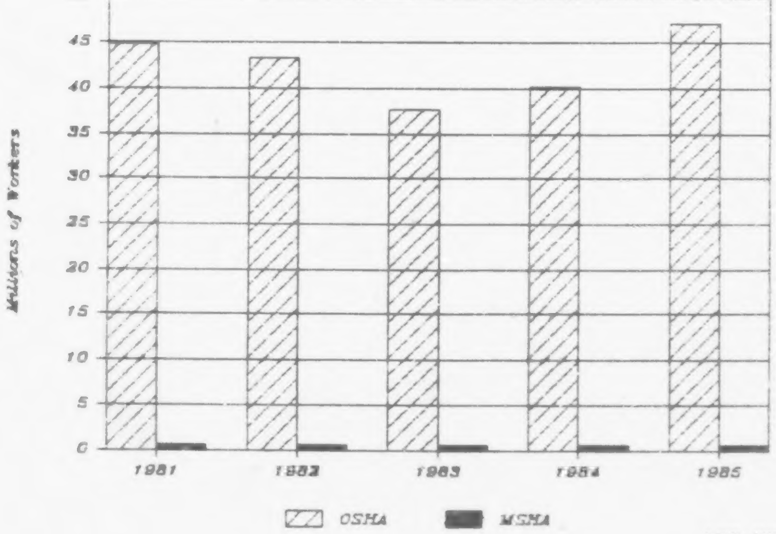
OSHA and MSHA

Budget Appropriation Per Fatality

AMC EXHIBIT 3

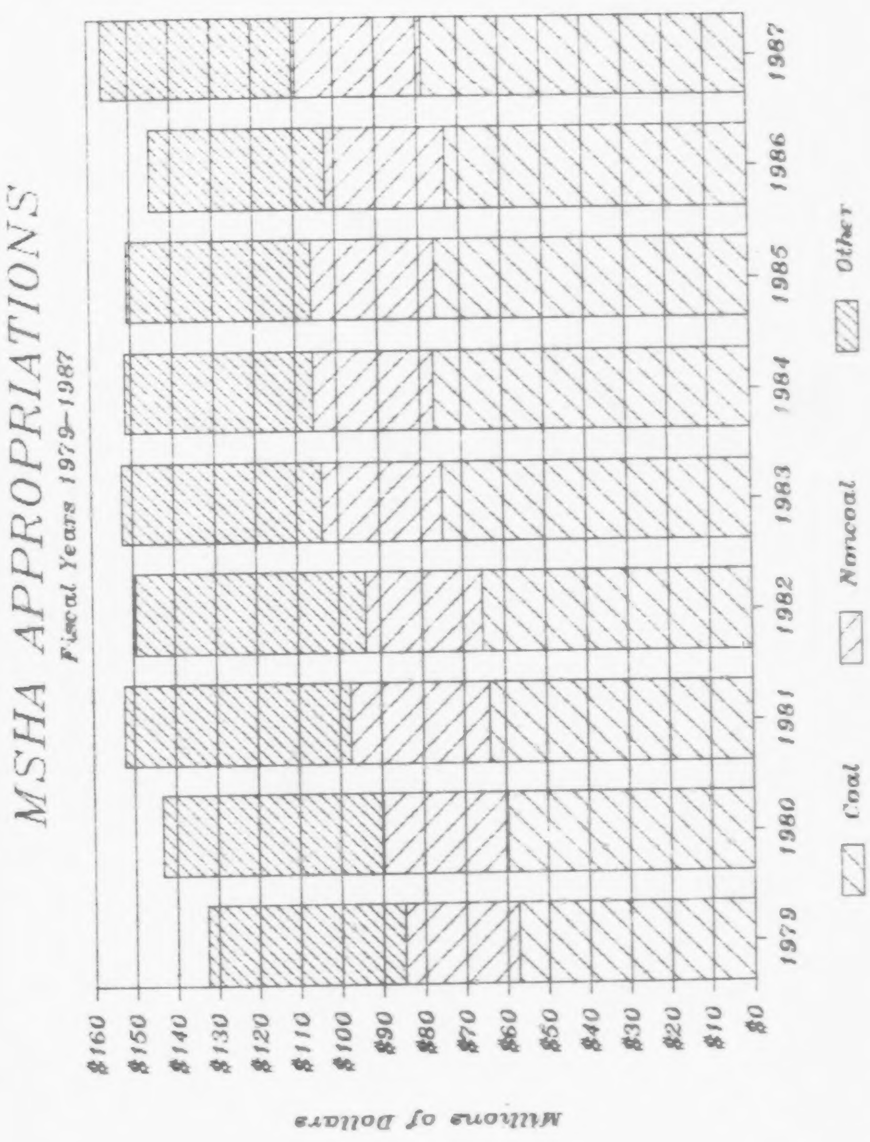


OSHA and MSHA Appropriations

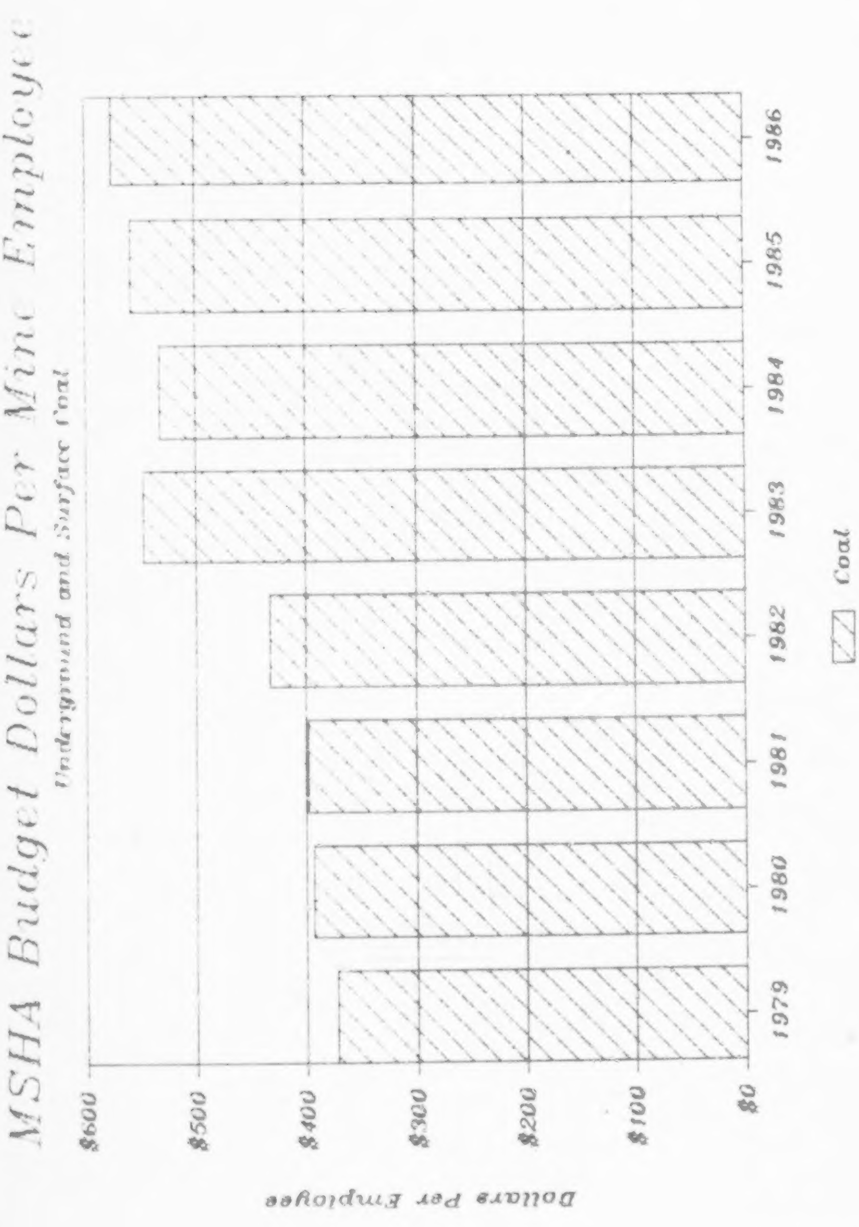


OSHA and MSHA
Number of Workers Covered

AMC EXHIBIT 4



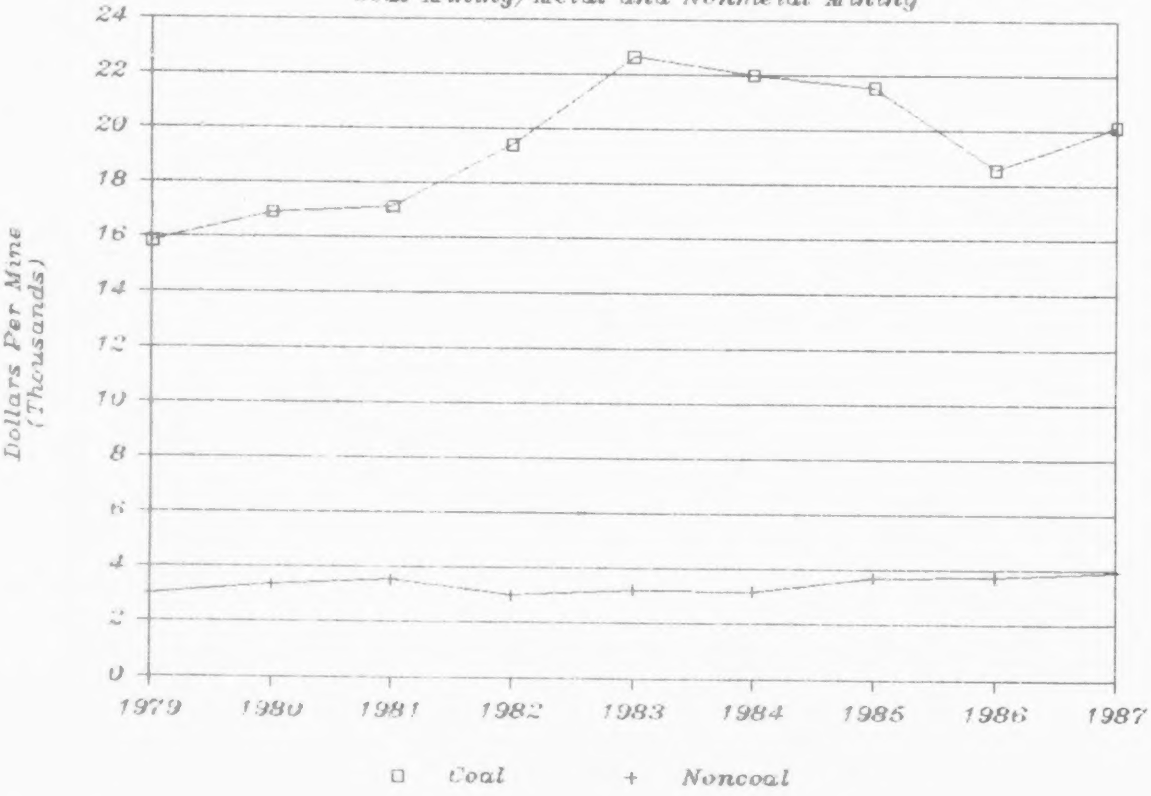
AMC EXHIBIT 5



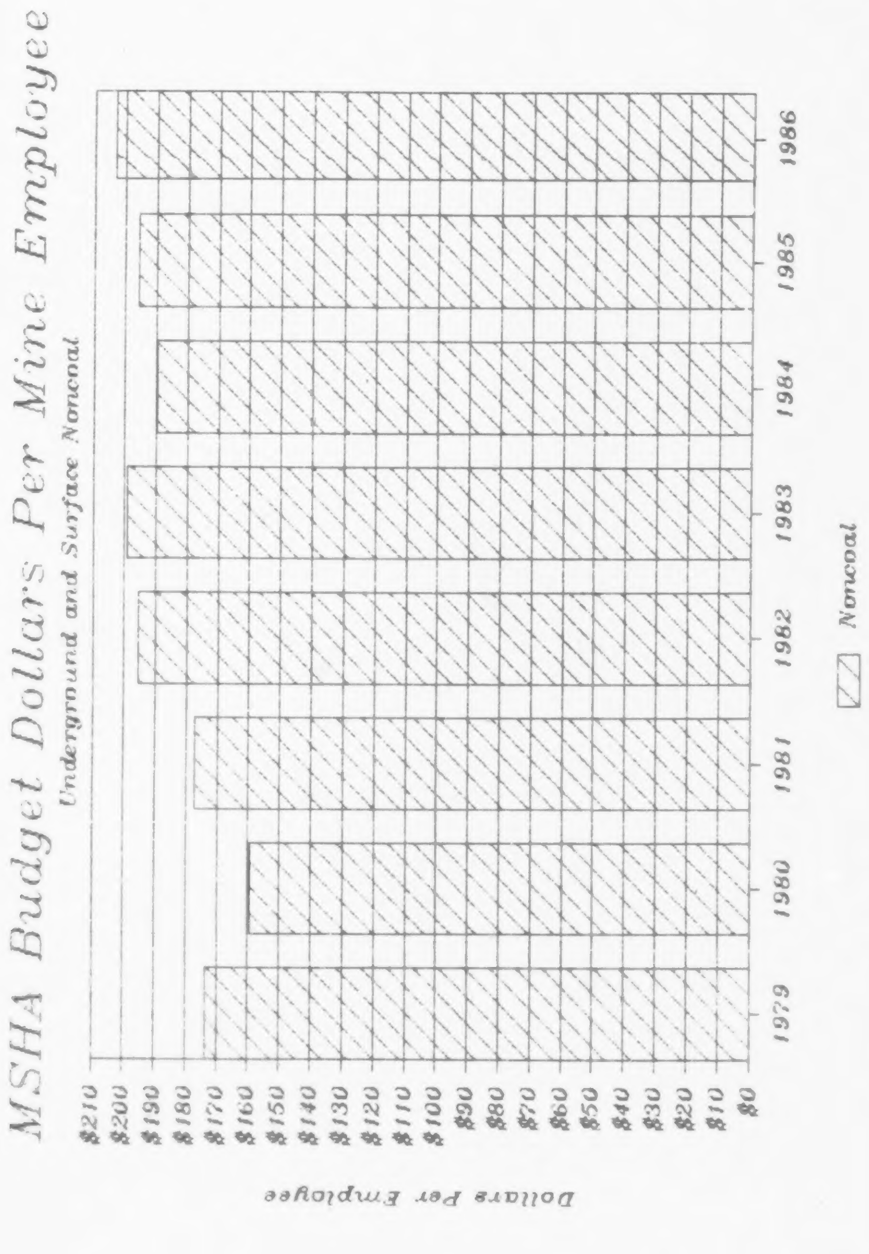
AMC EXHIBIT 6

MSHA Budget Dollars Per Operating Mine

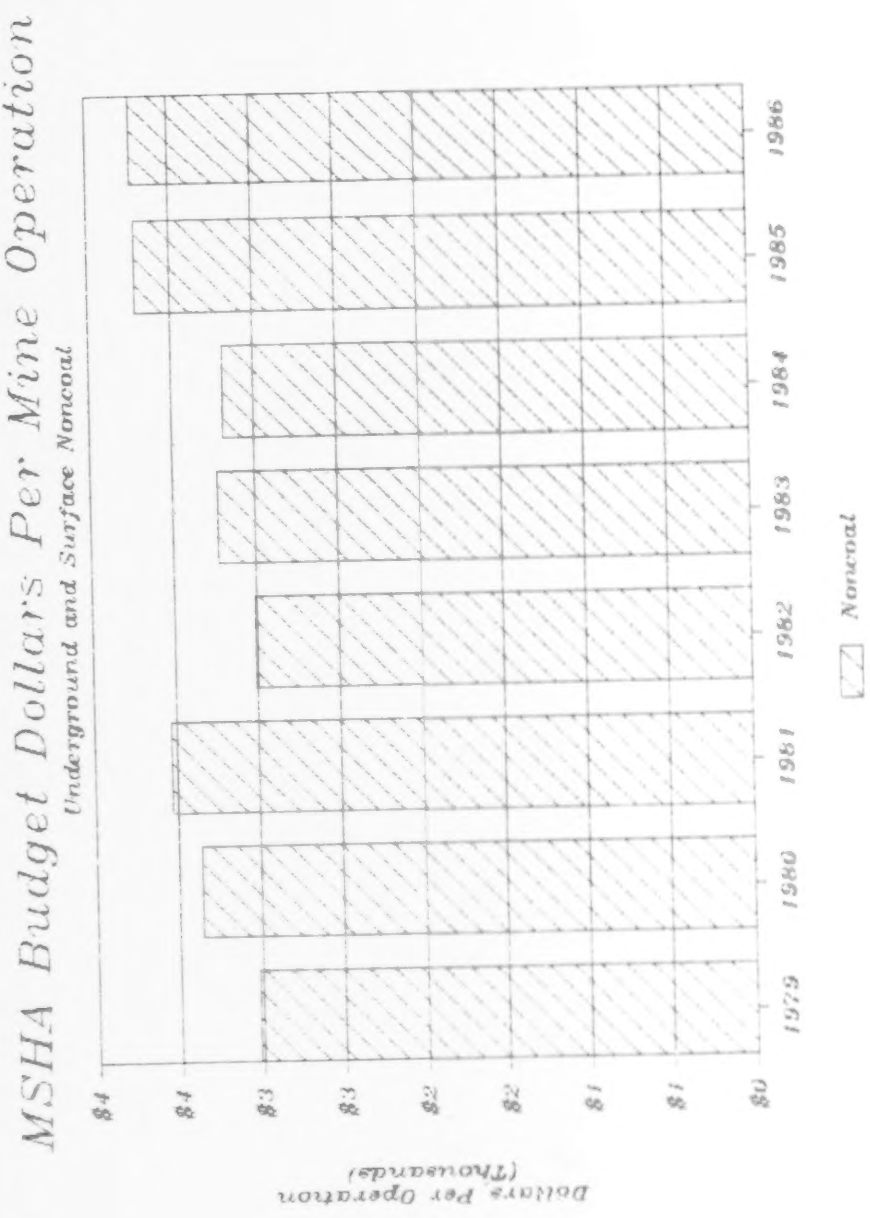
Coal Mining/Metal and Nonmetal Mining



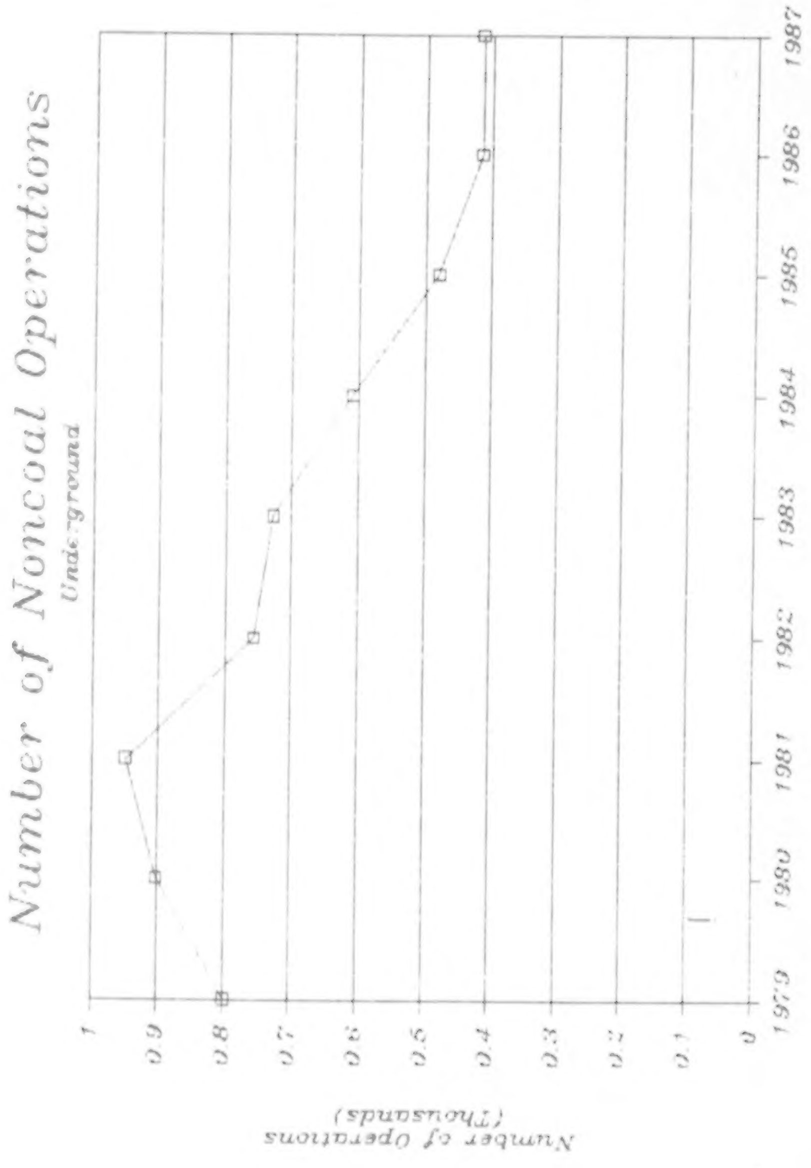
AMC EXHIBIT 7



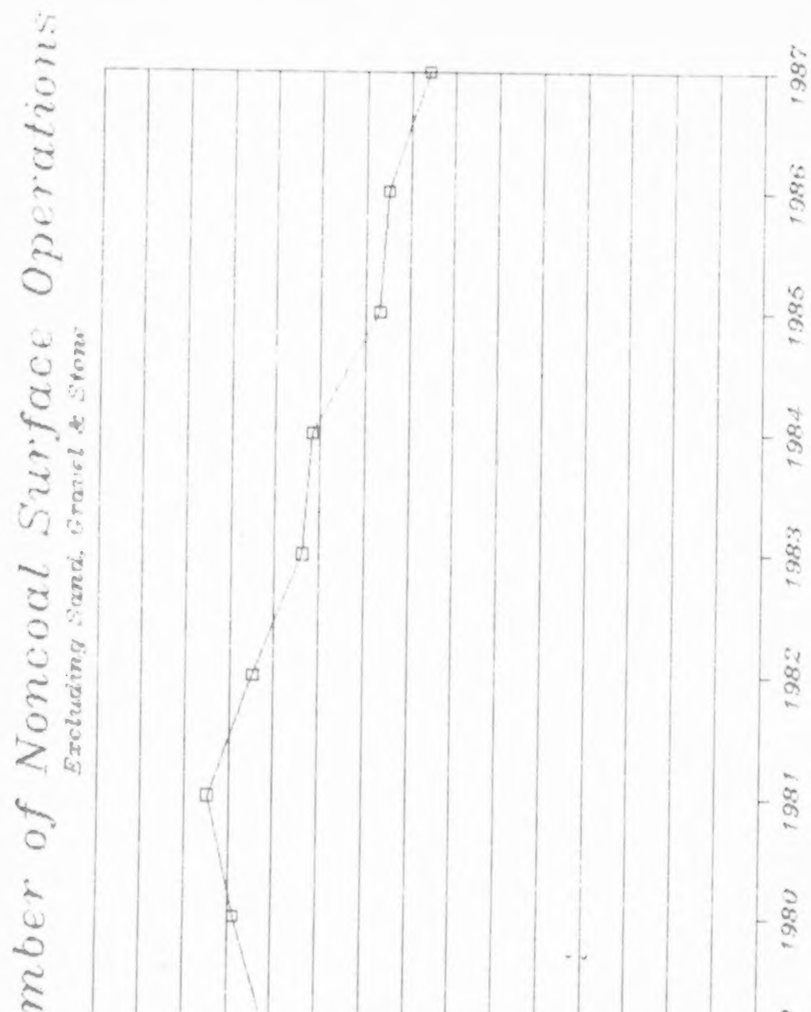
AMC EXHIBIT 8



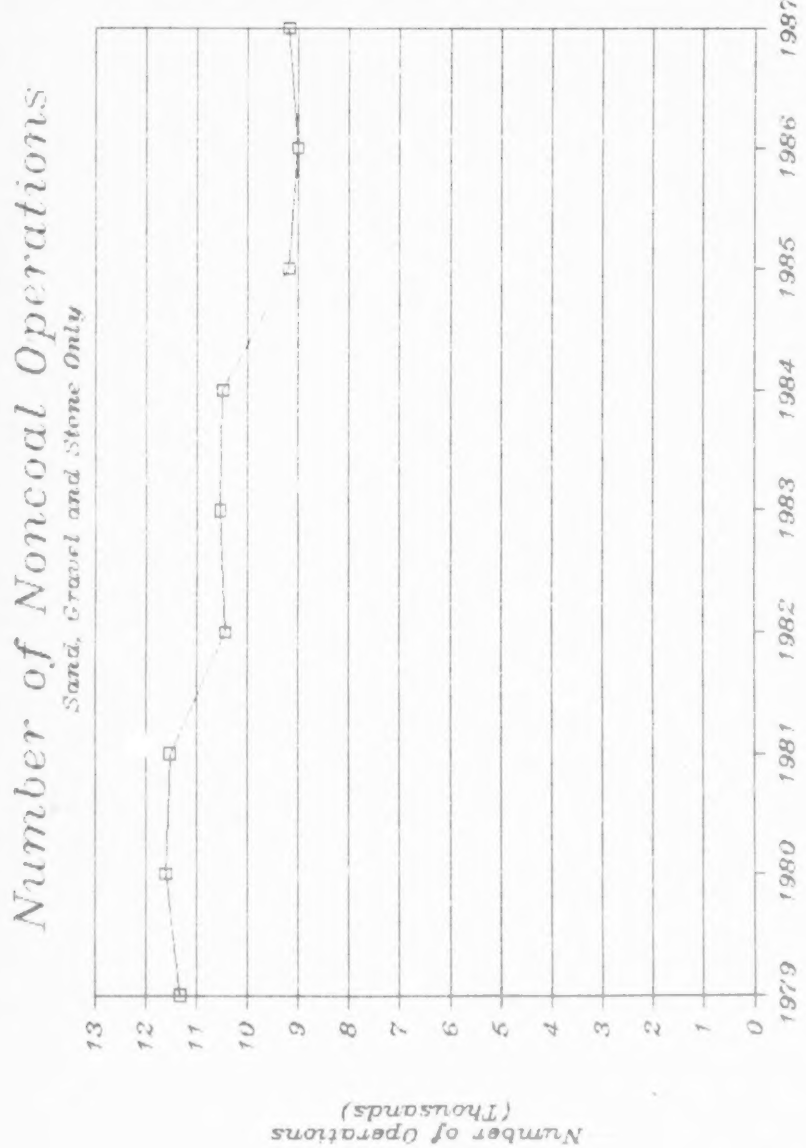
AMC EXHIBIT 9



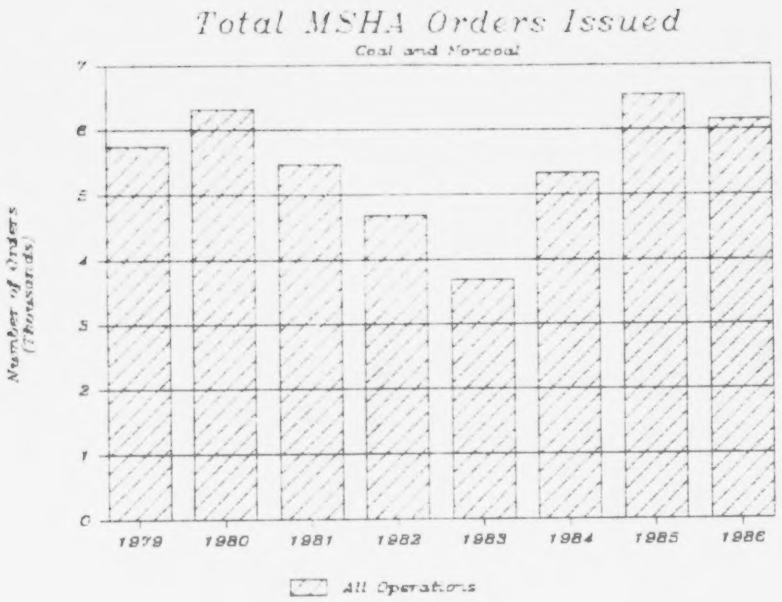
AMC EXHIBIT 10



AMC EXHIBIT 11

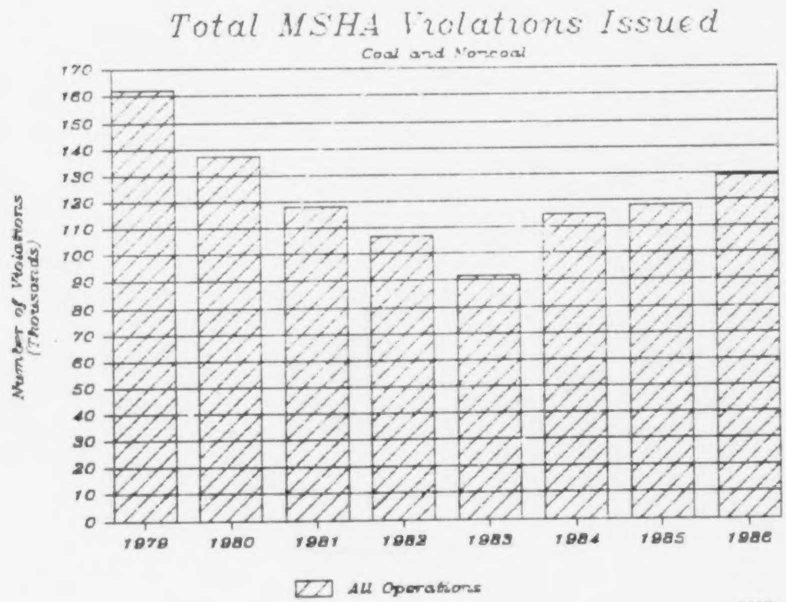


AMC EXHIBIT 12



Total MSHA Orders Issued

Coal and Noncoal



Total MSHA Violations Issued

Coal and Noncoal

AMC EXHIBIT 13

## MINING EMPLOYMENT

| TOTAL EMPLOYMENT: (000 Workers) | 1980 | 1981 | 1982 | 1983 | 1984 | 1985 | 1986 |
|---|---|---|---|---|---|---|---|
| Coal | 242 | 250 | 241 | 200 | 206 | 194 | 180 |
| Metals and mineral mining, exluding fuels but including sand and gravel | 302 | 297 | 230 | 215 | 220 | 216 | 204 |
| TOTAL NUMBER OF MINERS: | 544 | 547 | 471 | 415 | 426 | 410 | 384 |

AMC EXHIBIT 14

Mr. **Rollins**. We have just a few that I will ask on the Senator's behalf.

I want to thank you, by the way, for being able to make it today. I know that was a personal sacrifice.

I have noted with interest part of your testimony where you say the most of your industry's problems are due to low cost foreign competition.

Part of the reason that your foreign competition has low cost is because they do not have the safety record of the American mining industry, is that correct?

Mr. **Knebel**. In large measure, that is one aspect of it. They very rarely see any of the environmental concerns and cleanup problems that we have. They are really not overly concerned with the same range.

I think if you were aware of this, during the last Congress, Congressman Rahall introduced a bill which imposed an $8 a ton duty on coal, a really graphic illustration of the cost imposed on the U.S. producer as contrasted to his foreign counterpart, and that is not only with respect to safety, waste, and air, but also reclamation—the whole gamut. Believe me, these things add up.

Mr. **Rollins**. Are your members upset that they are required to compete on such uneven ground with foreign producers who do not have to observe the same kind of safety regulations as our American companies?

Mr. **Knebel**. You have to understand that the economy of this country, free enterprise, is based on a profit and loss, balance sheet. Whereas, some of our competitors are nationalized mines. They have as a matter of national policy the commitment to mining, number one, keep the people in mines and off the streets, thereby avoid some social problems. Secondly, they have an absolute need to generate hard currency.

Mr. **Rollins**. My question was whether any of your members are distressed by the need to compete with the foreign producers who hold down their costs by holding down safety?

Mr. **Knebel**. We are not about ready to point fingers at anything that any one individual government or entity within a mining operation outside the United States does. We would like to have everybody playing by the same set of rules. We would like to have free trade. We would like to have fair trade.

Mr. **Rollins**. On an even plane?

Mr. **Knebel**. Exactly.

Mr. **Rollins**. It is not even when they have a different set of safety regulations than you do, is that your point?

Mr. **Knebel**. That is correct.

Mr. **Rollins**. Your members must be upset when they are required to compete against domestic producers who do not abide by the same safety rules and regulations as your members do, is that right? Saturday night operators is the example you gave?

Mr. **Knebel**. I am very mindful of those concerns.

Mr. **Rollins**. Are they real?

Mr. **Knebel**. Our members are genuinely concerned for the image of the whole industry, and we feel that the fatalities and the injuries which go unreported, the mines that go uninspected and the product that comes out of those mines, not in any way reflected in the baseline of this economy, are tantamount to that same kind of unfair competition.

Mr. ROLLINS. So you would like the playing field level here as well as abroad, right?

Mr. KNEBEL. Yes. One way we feel that MSHA could help there would be to spend perhaps a little of their money and valuable resource allocation on overtime. Let their inspectors work Saturday night instead of Monday to Friday from 9 to 5.

We heard yesterday the comment by one of the witnesses that he felt he had been chastised because he was put on small mine inspection duty. I find that to be an incongruous attitude for a Federal employee.

Mr. ROLLINS. I note then your point that MSHA increase enforcement activities by working late on weekends. The point I wanted to make though is that you are looking for a level playing field across the world. Your members must certainly want one here at home, and it is not fair to a good coal operator who is decent about observing the safety rules and shares the commitment you stated that you are totally committed to the safety of your workers, for that operator to have to compete with someone who does not share that concern and who escapes MSHA's review as well?

Mr. KNEBEL. You say it very well.

Mr. ROLLINS. I think what we share at least is a commitment to even-handed enforcement as well as good enforcement, is that right?

Mr. KNEBEL. Right.

Mr. ROLLINS. Second, I guess I do not entirely understand the point of your argument about OSHA spending only $5 per employee versus $600 per coal miner spent by MSHA. What you say is "the immense difference in resource allocation is neither necessary or appropriate."

Are you saying we should increase the amount we are spending on employees covered by OSHA?

Mr. KNEBEL. Well, not quite.

Mr. ROLLINS. Are you saying then that we should reduce the amount?

Mr. KNEBEL. We have heard this time and again that MSHA has more inspectors per site than you can imagine.

If you look at the testimony which we submitted last September, it details the number of visits in a six-month period, to a particular mine. I can tell you that when I have had the opportunity to visit underground coal operations, I have never once been in the big mines when there was not a whole host of MSHA inspectors. Are they all necessary? Do they need to be around all the time? You do not see is the same type of intensity with respect to OSHA. That was really the reason we used that comparison. Certainly it is a given, I believe, that coal mining, any underground mining, if the company is not committed to a strong effective safety program, is inherently dangerous.

But believe me, the fact that you have a whole host of MSHA inspectors around does not in any way change the attitude. The attitude starts right at the top of management. The management of the coal companies within the Mining Congress are very, very much attuned to and committed to the concept of safety. They know it pays because when you have lost time from accidents, and you have downtime, you have fatalities, morale problems, frankly you are not as effective.

Safety pays as you well know.

Mr. ROLLINS. In the testimony of AMC last time, when AMC testified back in September, I am moved to repeat the point that was made there, and I am quoting from the testimony: "For example, the safest underground coal mine in the country, declared the winner of the Sentinels of Safety Award for 1985, experienced 308 Federal inspector shifts and 58 State inspector shifts in 1985."

That testimony has an ambiguous point. It may be more inspections lead to safe performance. I think that inference is just as reasonable as the one that MSHA inspectors are camping out at places where there is no need for it.

Mr. KNEBEL. I guess you can draw that conclusion if you are so inclined. However, I believe that if you really look at the true facts insofar as practices and commitment by management, you would find that conclusion is not so.

Mr. ROLLINS. Let me get the bottom line on the $600 being spent by MSHA per coal mine employee, per miner. Are you calling for reduced Federal mine safety spending?

Mr. KNEBEL. No, not really reduced. I want to see a strong, vigilant, effective MSHA working with revised regs, and good training. We have provided the MSHA people with a series of inspection horror stories which they have put into their training programs. We are not in any way trying to cut down the size of MSHA or its overall thrust. We hope that it can be more effective. We hope it can use its resources better. We hope it can get out of the pitfalls of politics and we hope, frankly, that it can get really current regs and do an even better job.

Mr. ROLLINS. I am concerned about that part of your testimony on page 5, where you say that while this Committee has relentlessly castigated MSHA, the agency's regulatory initiatives have not gone forward. You also stated you are gravely concerned that safety will suffer if the Committee is driven by the heat of partisan politics and fueled by extraneous labor union concerns about collective bargaining and frustrations of some former and current MSHA employees.

Are you saying this Committee's oversight activities have led to the stoppage in revision of the MSHA regulations?

Mr. KNEBEL. Well, I think that there have been a whole number of causes which have impacted on the oversight situation and which have occasioned the slowdown, of MSHA. They have had changing of their guard and a lot of problems. What I am hoping is that the union, the former employees, and the industry, can work in good faith to help MSHA rather than to grandstand and, if you will, get the last little bit of press.

Mr. ROLLINS. I think that sounds like a good ambition.

Mr. KNEBEL. Believe me, the regulation proposals and the horror stories we have offered to MSHA have been offered in that spirit. We feel that it is responsibility of industry to help the Government be more effective. We are not in any way suggesting that the agency itself be gutted or cut back. We want it to do a better job because we indeed have as our number one goal the safety of all miners.

Mr. ROLLINS. Your point about allocation and resources is especially well taken.

Thank you very much.

The Committee is in recess.

[Whereupon, at 2:47 p.m., the Committee adjourned, subject to the call of the Chair.]

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